

Rape as an Act of Institutional Wrongdoing

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Abstract

What if rape is an act of institutional wrongdoing, and becomes treated as such? In 2008, Nigel Pleasants coined the term ‘institutional wrongdoing’ to describe acts that are “chronically embedded in lawful, socially accepted, collectively sustained practices.”¹ In considering rape as an act of institutional wrongdoing, this thesis is concerned with how we can better conceptualise and practically address men’s violence against women. While the legal system, treatment of offenders, and everyday understandings of rape tend to focus exclusively on the individual, and particularly the psychological determinants of this violence, I propose that greater attention ought to be placed on its social and structural foundations. An attempt to reframe men’s violence against women as a cause and consequence of gender inequality is neither new nor unique. However, rape as an act of institutional wrongdoing is philosophically novel and provides a useful framework to combat men’s violence against women. Firstly, I establish how the act of rape is a complex social problem that cannot be addressed through legislative reform alone. Secondly, I investigate the wrongness of rape which reveals that it has no single wrong-making feature. Instead, the wrongfulness of rape is derived from the combination of individual features and the context in which it occurs. Finally, in assessing directions for future intervention and reform, I propose that men bear a collective moral responsibility for rape. Reconceptualising rape as an act of institutional wrongdoing is philosophically significant as this model provides a practical way to think about combating sexual violence and accounts for the very fact that rape is *both* an individual transgression and a social practice with institutional implications.

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Introduction

Rape is a *gendered violation* that differentiates and disadvantages women on the basis of their biological sex and/or perceived gender identity. In England and Wales alone, it is estimated that approximately 85,000 women are raped, 400,000 women are sexually assaulted, and 1.4 million women are victims of domestic violence each year.¹ The prevalence of rape is not exclusive to the United Kingdom. Rape is a widespread and deeply rooted phenomenon that does not discriminate by nationality, ethnicity, sexuality, age, class and ability/disability. The World Health Organisation (2013) has described men's violence against women as a "global health problem of epidemic proportions", affecting over one in three women worldwide.² Rashida Manjoo (2016) states that rape not only serves as a crime and violation of individual victims, but also as an "obstruction to full citizenship and substantive equality."³ In other words, the experience and threat of violence in women's lives significantly impedes their livelihoods and prospects. In turn, this harms women's physical and emotional health, restricts their sexual and reproductive choices, their autonomy, self-esteem, mobility and safety. The far-reaching implications of men's violence against women have been reflected in influential discourse: international human rights organisations, legislators and social movements have all attempted to reduce the pervasiveness of this phenomenon. Despite significant progress in legislation and policies, rape remains resistant to legal, political and social interventions.

This thesis is concerned with how we can better conceptualise and practically address rape and kindred phenomena. While the legal system, treatment of offenders, and everyday understandings of rape tend to focus exclusively on the individual, and particularly the psychological determinants of this violence, I

¹ Ministry of Justice (2013) 'Chapter 1: Executive Summary', *An Overview of Sexual Offending*

² World Health Organisation (2013) 'Violence against Women: 'a global health problem of epidemic proportions'', (Online) Available: http://www.who.int/mediacentre/news/releases/2013/violence_against_women_20130620/en/, Accessed: 24/04/17.

³ Rashida Manjoo (2016) 'Special Guest Contribution: Violence against Women as a barrier to the realisation of human rights and the effective exercise of citizenship', *Feminist Review*, Vol. 112, No. 1, p. 12.

propose that greater attention ought to be placed on the social and structural foundations of this violence. Although individual agents are active interpreters of culturally prescribed norms, rules and practices, the unwritten rules of society facilitate violence against women and diminish the perceived wrongness of *particular experiences* of men's violence against women. This position is not intended to remove the focus from the individual at fault, or mitigate legal and moral responsibility for his actions. Rather, it is to state that if the act of rape is fundamentally linked to systemic gender inequalities, then it should be treated beyond the level of the individual.

A few preliminaries are in order. Firstly, for my discussion, I am particularly interested in demonstrating how dominant constructions of heterosexuality and hegemonic forms of masculinity and femininity can be linked to the prevalence of rape. While sexual violence exists in myriad forms: same-sex violence, female perpetrated violence, violence against gay and lesbian individuals and so on, one feature that makes rape unique is that it is overwhelmingly a crime perpetrated by men against women. One may think that a proper analysis of rape as a gendered violation should involve a consideration of *all* potential victims, not just women. However, given that I am primarily concerned with the collective perpetration and suffering of rape, this thesis focuses on the broad categories of men as the main perpetrators of this crime and women as the primary victims.⁴ In doing so, the institutionalised nature and collective implications of rape are made clear. On a similar note, the terms 'sexual violence' and 'gender-based violence' are often used interchangeably. However, as Michael Messner et al (2015) identifies, "gender-symmetrical language risks rendering women invisible – and women are still by far the most common targets of sexual and domestic violence."⁵ Similarly, terms such as 'violence against women' render men invisible as the primary perpetrators of this violence. Throughout this thesis, I will therefore use the term 'men's violence against women'. Moreover, the term 'men's violence against women' is also used

⁴ Although I do not make any explicit reference to trans-men or trans-women throughout, I do not believe that there is any particular reason to not consider trans-women as women and trans-men as men.

⁵ Michael A. Messner, et al (2015) 'Plugging in: The Professional Cohort – Mid 1990s to the Present', *Feminist Allies and the Movement to End Violence against Women* (New York: Oxford University Press), p. 102.

consistently throughout to capture the continuum of sexual and non-sexual violence women experience and/or fear, including; harassment, coercive or controlling behaviour, and physical expressions such as sexual assault and rape. Secondly, for manageability, my analysis primarily focuses on rape in the UK. However, I do not believe this poses a potential exception to the generality of my thesis. While cultural attitudes, police procedures and legal definitions surrounding sexual offences may vary considerably around the world, rape as a phenomena at a societal level is not so culturally variable. Lastly, although a predominantly philosophical approach is taken, the nature of reflecting on rape as an act of institutional wrongdoing requires interdisciplinary input. Consequently, this thesis draws upon a large body of feminist, legal, psychological and sociological scholarship.

An attempt to reframe the act of rape as a cause and consequence of gender inequality is neither new nor unique. Feminist scholars and activists have long been dissident critics of the institutional implications of men's violence against women. In 1975, Susan Brownmiller published a comprehensive history of rape that set many of her readers into thinking critically about the subject for the very first time.⁶ Brownmiller's ground-breaking book made it possible to conceptualise rape as something entirely different: a highly regulated practice or institution. Brownmiller famously states, "From prehistoric times to the present, I believe rape has played a critical function. It is nothing more or less than a conscious process of intimidation by which all men keep all women in a state of fear".⁷ In other words, rape is a paradigmatic expression of men's dominance over women and is the product of patriarchal power relations that are reinforced both ideologically and institutionally.

Brownmiller's aim in writing *Against Our Will* was to "give rape its history" in order to "deny it a future".⁸ Building on Brownmiller's aim, my objective for this thesis it to better understand *how* this future can be denied. My *philosophical*

⁶ Keith Burgess Jackson (1999) 'A History of Rape Law', in Keith Burgess Jackson (eds.) *A Most Detestable Crime: New Philosophical Essays in Rape* (Oxford University Press: Oxford), p. 1.

⁷ Susan Brownmiller (1975) 'The Mass Psychology of Rape: An Introduction', *Against Our Will*, (Middlesex: Penguin Books), p. 15.

⁸ Susan Brownmiller (1975) 'Women Fight Back', *Against Our Will*, p. 859.

aim is to ask important conceptual questions about the nature of rape in order to determine whether it should be considered a wholly individualistic act, or a highly regulated practice where individual perpetrators actions are inextricably tied to institutional rules. Questions such as: What is rape? What are its essential features? And why is it wrong? If rape is an act of institutional wrongdoing, are all individuals collectively responsible for ending acts of men's violence against women that contribute to its prevalence? Assuming that *most* people know what rape is and intuitively believe that rape is wrong, these questions may appear unusual at first. However, as a crime so deeply captured in the public imagination, embedded with gendered meaning, and following the increasing trend towards the ever-broadening use of the term, there are good reasons to investigate its ambiguity as a legal and moral violation.

For those more sceptical of the moral argument, there is also a strong incentive for the State to investigate how to best protect women from men's violence. In 2004 it was estimated that sexual offences have an overall cost to UK society of £8.5 billion per year, with each rape costing over £76,000.⁹ In March 2016, the UK government pledged £80 million in funding through to 2020 to support tackling Violence against Women and Girls (VAWG) by providing stable national funding for specialist services and national helplines, and the overall provision of services from health care to law enforcement.¹⁰ While government recognition and financial commitment to combat sexual offences are significant, I argue that greater attention ought to be placed on developing primary prevention strategies that seek to directly address the *causes* of this violence. If there is State funding for the prevention of crimes of sexual violence, policy makers need to get it right. I therefore hope to find sufficient grounds on which to evaluate whether current policies, legal practices and social interventions are effectively maximising protection for women.

⁹ National Archives (2017) 'Cross Government Action Plan on Sexual Violence and Abuse', April 2007, p. iii (Online) Available:

<http://webarchive.nationalarchives.gov.uk/+/http://www.homeoffice.gov.uk/documents/Sexual-violence-action-plan2835.pdf?view=Binary>, Accessed: 17/01/17.

¹⁰ GOV.UK (2017) '£80 million to stop violence against women and girls', March 2016 (Online) Available:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522166/VAWG_Strategy_FINAL_PUBLICATION_MASTER_vRB.PDF, Accessed: 17/01/17.

So, what if rape is an act of institutional wrongdoing, and becomes treated as such?

In 2008, Nigel Pleasants coined the term ‘institutional wrongdoing’ to describe systemic practices that are neither unlawful nor (generally) recognised by agents as palpably wrong.¹¹ While the extent to which institutional conditions influence individual morality remains heavily contested, episodes of institutional wrongdoing (such as colonialism, racial segregation and slavery) are implicated in complex legal and social structures that can be seen to prevent individuals from perceiving the wrongness of their actions. For example, it is often questioned whether the social, cultural and historical conditions of ancient Greek slave owners or German citizens during the Second World War rendered them *unable* to question the morality of their practices.¹² In virtue of the fact that acts of institutional wrongdoing are typically “chronically embodied in lawful, socially accepted and collectively sustained practices”,¹³ it can be argued that agents belonging to the society in question do not have a good reason to recognise or even suspect wrongdoing.¹⁴ With the exception of a few dissident critics, it is only after a “change in the normative consensus over their legitimacy” that such practices come to be unanimously condemned and unequivocally regarded as wrongful.¹⁵ At first glance, it may appear unclear how rape could fit this very definition. Almost everybody intuitively believes that rape is morally wrong, individual perpetrators are generally deplored in society and rape is a crime within most jurisdictions an offence that warrants the most severe punishments – in the United Kingdom, for instance, up to a life imprisonment. Indeed, the claim that rape is an act of institutional wrongdoing involves two views that some may find surprising. One is that rape is an *institution* and the other is that it has *collective wrong-making features*.

Rape as an institution

Firstly, in stating that rape is an institution, I do not mean to imply that institutions of the State or dominant groups in society outwardly promote acts of

¹¹ Nigel Pleasants (2008) ‘Institutional Wrongdoing and Moral Perception’, *Journal of Social Philosophy*, Vol. 39, No. 1, pp. 96-115.

¹² Michele M. Moody-Adams (1994) ‘Culture, Responsibility, and Affected Ignorance’, *Ethics*, Vol. 104, No. 2, pp. 291-309.

¹³ Nigel Pleasants (2008) ‘Institutional Wrongdoing and Moral Perception’, p. 96.

¹⁴ Neil Levy (2003) ‘Cultural Membership and Moral Responsibility’, *The Monist*, Vol. 86, No. 2, p. 157.

¹⁵ Nigel Pleasants (2008) ‘Institutional Wrongdoing and Moral Perception’, p. 96.

men's violence against women. Rape is an institution not in the sense that it names an organisation, such as MI5 or the CIA, but rather, the act of rape operates within a practice; similar to racism, with many social, cultural and historical embodiments.¹⁶ Similarly to Foucault's (1975) analysis on punishment, a practice can take root and become institutionalised so that it is not necessary for anyone to supervise the operation as a whole.¹⁷ As Claudia Card (1991) asserts, defining rape as an institution does not mean to say that a group of powerful men sit in a smoke filled room in some sort of patriarchal conspiracy.¹⁸ Rather, the institution of rape is deeply entrenched in multiple complex networks and reinforced through the law, sets of interpersonal relations, collective ideologies, and discourses on genders and sexualities. While UK laws officially prohibit rape, this thesis attempts to demonstrate that we have collectively (and somewhat inadvertently) supported men's violence against women by regulating practices and implementing policies based on false theorising.

Rape as an act of collective wrongdoing

In proposing that rape is an act of collective wrongdoing, I aim to highlight the various ways in which we are all collectively implicated in the institution of rape. Similarly to murder, battery and theft, rape too is widely defined as an act of *individual wrongdoing*, where deviant individuals "act in violation of the laws, rules, norms and values of their society."¹⁹ However, individualistic explanations of rape explicitly ignore the socio-cultural context in which rape occurs and its wider relationship to dominant cultural ideologies, normative practices and social, political and economic institutions. In doing so, many participants in the institution of rape may not think of themselves as participants. Instead, they are encouraged to believe that acts of men's violence against women belong to deranged men, men who were unfairly provoked by a woman, or falsely accused. Indeed, rape continues to be conventionally defined as either a pathology or an individual transgression - both of which portray the crime of rape as *only* a consequence of an individual's wrongful action.

¹⁶ Claudia Card (1991) 'Rape as a terrorist institution', in RG Frey and CW Morris (eds.), *Violence, Terrorism and Justice*, (Cambridge: Cambridge University Press), p. 297.

¹⁷ Michel Foucault (1977) *Discipline and Punish: The Birth of the Prison*, (London: Penguin Books).

¹⁸ Claudia Card (1991) 'Rape as a terrorist institution', p. 300.

¹⁹ Nigel Pleasants (2008) 'Institutional Wrongdoing and Moral Perception', p. 98.

In December 2012, Jyoti Singh, a 23-year-old physiotherapy student was brutally gang-raped by six men on a bus in Delhi. During an interview with one of the six rapists, Mikesh Singh declared “housework and housekeeping are for girls, not roaming in discos and bars at night doing wrong things, wearing wrong clothes... If women are not good, men have a right to teach them a lesson”.²⁰ Triggering a global outcry, media coverage became fixated on demonising not only the six perpetrators of this horrific crime, but also *Indian culture*. In claiming that “India should be ashamed”,²¹ Western countries exposed a double standard by minimising the nature of systemic violence in their own countries while simultaneously righteously condemning India as a paradigmatic example of a ‘rape culture’. That is, a society that condones, accepts, normalises and even facilitates rape through various cultural practices that are based on ideologies surrounding the inferiority of women and superiority of men, or on stereotyped roles for men and women.²²

Just two years after the Delhi gang-rape, the Home Office, Ministry of Justice and Office for National Statistics released their first ever report on sexual violence, finding that annually approximately 400,000 women are sexually assaulted, 85,000 women are raped and 1.4 million women are victims of domestic violence in England and Wales alone.²³ Globally, a recent study by the World Health Organisation (2013) indicates that sexual violence affects one in three women.²⁴ With many incidences of men’s violence against women going unreported, these figures are believed to understate the real scale of this issue.

²⁰ BBC (2015) ‘India’s Daughter’, 4th March 2015 (Online) Available: <http://www.bbc.co.uk/programmes/b05534p0>, Accessed: 23/09/16.

²¹ Anita Anand (2013) ‘India Should Be Ashamed: Being born a girl isn’t a crime’, *The Telegraph*, 11th September 2013, (Online) Available: <http://www.telegraph.co.uk/women/womens-life/10299640/India-should-be-ashamed-Being-born-a-girl-isnt-a-crime.html>, Accessed: 23/09/16.

²² Emilie Buchwald, et al (1993) ‘Introduction’, *Transforming a Rape Culture*, (Minneapolis: Milkweed Editions), p. 1.

²³ Ministry of Justice (2013) ‘Chapter 1: Executive Summary’, *An Overview of Sexual Offending in England and Wales*, p. 6 (Online) Available: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214970/sexual-offending-overview-jan-2013.pdf, Accessed: 13/04/15.

²⁴ World Health Organisation (2013) ‘Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence’, pp. 1-50 (Online) Available: http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625_eng.pdf?ua=1, Accessed: 07/12/16.

Given the international prevalence of violence against women, it would be a serious mistake in psychological categorisation to continue assuming that acts of sexual violence are only committed by deviant, violent, or psychologically disturbed men. As Michael Kimmel (2008) questions, “how can such a pervasive event be the work of a few lunatics?”²⁵ If the existence of men’s violence against women cannot be explained through individual anomalies, it is therefore important to consider how normative practices shape moral perceptions concerning the permissibility of violence towards women.

While it may seem innocuous, the way in which we collectively think about rape is harmful to a large number of people. The language and categories we use can construct problems in particular ways which further implies certain solutions. The language we use also reflects a subtle, yet significant power in determining who has control over the way rape is defined and who is silenced by this representation. Jackson Katz (2012) identifies how even the term ‘violence against women’ is problematic because it is a passive construction that renders men invisible by removing the active agent in the sentence.²⁶ ‘Men’s violence against women’ is a far more accurate term.²⁷ Given that almost *all* rapists are men and almost *all* victims of rape are women²⁸, this statement highlights that men’s use of sexual violence towards women is a gendered problem grounded in the patterns of masculine and feminine socialisation, and patriarchal social organisation.

To demonstrate how men are collectively rendered invisible from a conversation that is primarily about them,, Chapter 1 explores how discourses on issues relating to men’s violence against women can have a significant influence on both individual moral perception and the capacity of the criminal justice system

²⁵ Michael Kimmel (2008) ‘The Gender of Violence’, *The Gendered Society*, 3rd Edition, (New York: Oxford University Press), p. 329

²⁶ Jackson Katz (2012) ‘Be the Hero’, *YouTube*, (Online) Available: https://www.youtube.com/watch?v=RnthcrRJ_Kc, Accessed: 07/12/16.

²⁷ *Ibid.*

²⁸ In 2011, males accounted for the overwhelming majority of offenders found guilty of sexual violence: rape (94%) and sexual violence (90.3%) in the Ministry of Justice (2013) ‘Demographic breakdowns of offenders convicted for sexual offences’, *An Overview of Sexual Offending in England and Wales*, pp. 33-34 (Online) Available: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214970/sexual-offending-overview-jan-2013.pdf, Accessed: 13/04/15.

to respond effectively to sexual offence cases by absolving men of responsibility and blaming women for provoking it. For example, there is a long history of telling women how to avoid sexual violence, instead of telling men how to stop using it. Indeed, rape myths and rape avoidance rules have played a powerful role in perpetuating fear and legitimising superficial responses to rape. Rather than seeking to create a society in which women need not fear male sexual aggression, women are told they are not being fearful enough by constantly admonishing women for not taking precautions against the ever-present risk of men's violence. Women are regularly warned not to drink too much, walk alone at night, accept an invitation to a man's room, or dress too 'provocatively'. While such rules imply that there are legitimate measures women can take in order to avoid being raped, sexually assaulted or harassed, these claims are empirically unfounded and significantly limit women's ability to participate fully in society as equal citizens.

It is important to note that classifying gender as a key feature of rape does not mean to imply that men do not also suffer from the fear and prevalence of rape. Rather, it is to assert the empirical fact that men and women are unequally socially situated in regards to the experience of rape.²⁹ While the rules of rape are empirically unfounded, rape avoidance rules become second nature and operate in the backdrop of *most* women's daily lives. Regardless of whether or not a woman has experienced rape, the threat of rape shapes the spaces we inhabit, the types of relationships we build with men, and the opportunities available to us. Similarly to punishment, the threat does most of the work.³⁰ Claudia Card (1991) provocatively claims that rape avoidance rules have "terrorist implications" in their ability to manipulate target populations into compliance by creating a state of affairs that people would rationally reject in

²⁹ Catharine A. MacKinnon (1989) 'Rape: On Coercion and Consent', *Towards a Feminist Theory of State*, (Harvard University Press), p. 176.

³⁰ For example, in *Discipline and Punish*, Michel Foucault (1977: 177) states "at the heart of all disciplinary systems functions a small penal mechanism". While normalising judgements, surveillance and the geometry of space form the basis of disciplinary systems, the small penal mechanism acts as a significant deterrent. This functions as an extremely effective method of social control as individuals begin to internalise the notion that if they act outside of normative social conventions, there will be consequences for their actions. See Michel Foucault (1997) *Discipline and Punish: the Birth of the Prison*, translated by Alan Sheridan (London: Penguin Books).

different circumstances.³¹ For example, women may not allow themselves to walk alone at night, even though they believe that women *should* be able to walk alone at night. In focusing exclusively on the individual disposition of the victim and what she was doing or wearing at the time, it is unsurprising that the sexual violence endemic we're experiencing today has been resistant to legal, political and social interventions.

If we continue to culturally define rape as a wholly individualistic act committed only by psychologically disturbed men who attack women at night, then the solutions we devise to combat its prevalence will inevitably be superficial at best (e.g. gender policing and implementing curfews). Not only do the number of potential rapists remain the same, but such measures validate the persistence of men's violence against women by reminding women that rape is a women's problem and they must bear the cost of living and moving about in fear, instead of addressing the real causes of rape. In further reflecting on the link between how we socially imagine rape to how we practically choose to combat it, Chapter 2 argues that the act of rape and prevalence of men's violence against women in society is best understood as a moral violation to all women. To be forced to have sex, and then be told that such force was "part of what you risked" is not only used to absolve men of responsibility for that force, but also to deprive women of the moral grounds necessary to insist that certain behaviour towards them is unacceptable. It is therefore important that we continue to critically explore and challenge the cultural beliefs that rationalise men's violence against women in a twisted reversal of responsibility and question whose interests are being served by these claims and whose values are being privileged and why.

Rape and collective responsibility

While it is culturally unsettling to comprehend a social order that permits men's violence against women as a way of life, there are good reasons to believe that a belief system reinforced by institutions and embodied by a collective can significantly infringe on our individual ability to grasp important moral facts. The

³¹ Claudia Card (1991) 'Rape as a terrorist institution' p. 301.

debate surrounding the various ways in which individual morality is constructed, conditioned and constrained is significant as it holds profound implications concerning whether or not cultural membership alone can diminish or absolve individual responsibility for acts of institutional wrongdoing. As Pleasants (2008) identifies, the idea that an individual's beliefs, perceptions, and values can be influenced by social rules and institutional structures have been widely criticised by social theorists who claim that such an assertion unfairly reduces moral agents to passive, "cultural dopes".³² However, historical evidence strongly suggests that there is of course a strong link between cultural conditions and individual moral agency. For example, Hannah Arendt's (2003) book *Eichmann in Jerusalem* places significant emphasis on the pervasive influence of a bureaucratic system on an individual's moral perceptions.³³ Similarly, Daniel Goldhagen's widely cited and highly controversial book *Hitler's Willing Executioners: Ordinary Germans and the Holocaust* demonstrates how institutionalised anti-Semitism during the nineteenth and twentieth centuries induced ordinary Germans to become "willing genocidal killers".³⁴ While culture does not wholly determine action, it can close off certain possibilities in limiting the evidence available for agents to critically question the morality of their current practices.

I conclude my analysis of rape as an act of institutional wrongdoing with an assessment of men's collective moral responsibility for rape. Depending on whether we conceptualise institutional wrongdoers as having been unable to see the wrongness of their society's practices or whether they actively chose to remain ignorant, the controversial question remains as to whether individuals can be held culpable for their actions.³⁵ As Larry May and Robert Strikwerda (1998) identify, discussions on collective responsibility tend to elicit extreme responses in the fear that conceptualising moral culpability in this way will somehow absolve or diminish the blameworthiness of individual offenders by

³² Nigel Pleasants (2008) 'Institutional Wrongdoing and Moral Perception', p. 97.

³³ Hannah Arendt (2003) *Eichmann in Jerusalem: A Report on the Banality of Evil*, (New York: Penguin Books), pp. 5-6.

³⁴ Daniel Goldhagen (1996) Goldhagen, D. (1997) *Hitler's Willing Executioners: Ordinary Germans and the Holocaust*, (New York: Vintage Books), p. 3.

³⁵ Nigel Pleasants (2008) 'Institutional Wrongdoing and Moral Perception', pp. 97-99.

allowing individual men to get “off the hook too easily”.³⁶ However, I argue that significant concerns surrounding the principle of diminished responsibility are misguided. In challenging the orthodox view that rape is *only* the responsibility of rapists, this line of inquiry has significant practical implications for prevention work by exposing the systemic nature of rape and possibilities for resistance. Given that it is largely men and boys who promote and perpetuate violence against women, the imposition of collective responsibility provides a means to engage men and boys to critically reflect on their beliefs, values and practices, and in turn, potentially transform the institution of rape and patriarchal operations.

If rape is to be theoretically and practically understood as an act of institutional wrongdoing, there are real challenges. Addressing men’s violence against women in a meaningful way requires a paradigm shift in the way we collectively construct and perceive masculine and feminine identities, heterosexual sex, and assessments of moral and legal culpability, therefore resulting in revolutionary changes in both interpersonal and institutional relations. As Susan Griffin (1977) asserts “rape is not an isolated act that can be rooted out from patriarchy without ending patriarchy itself.”³⁷ Pragmatically, such a significant social change is unlikely to occur in the near future. However, there is an obvious link between how we think about a problem and the practical solutions we choose to combat it. If we continue to classify rape as only an individual crime, we will continue to understand rape as a morally abhorrent, yet seemingly natural and inevitable feature of our social world rooted in the psychology of disturbed men. However, if we reconsider the moral and legal status of rape as a complex act of institutional wrongdoing, and understand rape as an act that is inextricably linked to a masculine identity that is socially and institutionally formed, there are good reasons to believe that the social conditions which shape individual attitudes and learned behaviours can be reformed.

Summary of chapters

³⁶ Larry May & Robert Strikwerda (1998) ‘Rape and Collective Responsibility’ in Larry May’s *Masculinity and Morality*, (London: Cornell University Press) p. 96.

³⁷ Susan Griffin (1971) ‘Rape: The All-American Crime’, *Ramparts Magazine*, p.35 (Online) Available: <http://www.unz.org/Pub/Ramparts-1971sep-00026>, Accessed: 12/03/16.

This thesis is divided into three chapters: 1 Problematising Sex, 2 The Wrong of Rape, and 3 Collective Responsibility for Rape. In Chapter 1, I explore the prevalence and implications of rape myths and the question of consent to establish that the act of rape is a complex social problem that cannot be addressed through legislative reform alone. While the wrongness of rape appears unadorned and obvious, in Chapter 2 I argue that it matters *why* we collectively think rape is wrong. In doing so, I demonstrate how scholarly attempts to classify the wrongness of rape in individualistic terms are philosophically misguided, instead favouring the view that the wrongness of rape is best understood by the way in which it is a moral violation to *all* women. Lastly, in Chapter 3 I explore the vexed question of collective responsibility. If rape is to be accepted as an act of institutional wrongdoing, to what degree is this conception useful to its eradication? I argue that while we are encouraged to believe that responsibility for acts of men's violence against women belong solely to deranged men, it is men as a collective who bear the greatest ethical responsibility to act against the institution of rape.

Problematising Sex

"I am of the opinion that even the most perfect rape laws in the land, strictly enforced by the best citizens will not be enough to stop rape"

In recent years, there has been an official recognition that steps need to be taken in order to deal with the poor conviction rates for rape in England and Wales.³⁹ Following the first ever report on sexual offending which revealed that approximately 85,000 women are victims of rape every year, much attention has been placed on the shortcomings of law enforcement agencies and the criminal justice system in their failure to encourage reporting, support victims, and secure rape convictions.⁴⁰ However, in representing what David Ormerod (2011) describes as “the most comprehensive and radical overhaul of law relating to sexual offences ever undertaken in England and Wales”,⁴¹ the *Sexual Offences Act* (SOA) [2003] has improved the law surrounding sexual crimes immensely. Despite this, the power of the police and capacity of the law in addressing sexual offences remains somewhat limited. Men’s violence against women is arguably still as “prevalent, menacing, and limiting to women as it has ever been.”⁴² While the legal system holds an instrumental and symbolic function, this chapter will argue that rape must be understood as a complex social problem that cannot be addressed through legislative reform alone.

While rape is now defined broadly as non-consensual sex, the law does not adjudicate impartially on the question of rape. Rather, it participates in social constructions surrounding what counts as rape, and whose violation is deemed legitimate enough to amount to ‘rape’. Conventional social understandings of rape continue to limit the imagination of those who enact, enforce and interpret

³⁸ Susan Brownmiller (1975) ‘Women Fight Back’, *Against Our Will*, (Middlesex: Penguin Books), p. 400.

³⁹ Home Office (2016) ‘Violence against Women and Girls (VAWG) Strategy Report’, March 2016 (Online) Available: <https://www.gov.uk/government/policies/violence-against-women-and-girls>, Accessed: 15/06/16.

⁴⁰ Ministry of Justice (2013) ‘An Overview of Sexual Offending in England and Wales’, 10th January 2013, pp. 1-73 (Online) Available: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214970/sexual-offending-overview-jan-2013.pdf, Accessed: 13/04/15.

⁴¹ David Ormerod (2011) ‘Sexual Offences’, *Smith and Hogan’s Criminal Law*, 13th edition, (Oxford: Oxford University Press), p. 716.

⁴² Patricia Smith (1999) ‘The Persistence of Rape’, in Keith Burgess-Jackson *A Most Detestable Crime: New Philosophical Essays on Rape*, (New York: Oxford University Press), p. 32.

rape laws - individuals who work within the police, legal profession and the courts are all part of the institutionalisation of rape. As Robin West (1996) identifies, the State has been reluctant to prosecute, or juries to convict, the rapes of “promiscuous” victims, women of colour, and women who, simply by their dress, location or behaviour were “asking for it”.⁴³ While law reform in this area has been important, the divide between how jurors interpret and then make decisions about cases concerning sexual offences remains large. It is therefore equally as important that we continue to critically examine the values which underpin our current legal framework concerning sexual offences and question whose interests are being served by these cultural beliefs and why.

This chapter will argue that combating the prevalence of rape is severely limited in a legal capacity unless there is a broader approach to educational and behavioural change strategies which recognise the various socio-cultural conditions that make women vulnerable to sexual violence, and increase men’s propensity to use violence. This chapter is organised as follows. Firstly, part one will explore legislative reforms and their relationship to social meanings of rape. It will demonstrate how blaming the law’s failure to protect women misses more fundamental biases within the law. Consequently, widely accepted prejudices leave victims of men’s violence to be discriminated by a system which ought to protect them.⁴⁴ Part two offers a more forensic examination of this argument, with an exclusive focus on the question of consent. In critically assessing whether consent to sex can ever be fully understood in terms of a free and equal agreement, this section argues that the law’s egalitarian framework for thinking about an individual’s capacity to consent to sex cannot practically provide a sound basis for sexual interactions. Lastly, part 3 reiterates the moral limits of criminal law. Such an assertion is not intended to undermine the law, but rather, to emphasise the simple fact that addressing men’s violence against women in a meaningful way requires a substantial revision of accepted social practices. While UK laws officially prohibit rape and sexual assault, I attempt to demonstrate that we have collectively (and somewhat inadvertently) supported

⁴³ Robin West (1996) ‘A Comment on Consent, Sex and Rape’, *Legal Theory*, Vol. 2, No. 3, p. 238.

⁴⁴ Dorothy E. Roberts (1993) ‘Rape, Violence and Women’s Autonomy’, *Chicago-Kent Law Review*, Vol. 69, No. 2, Symposium: Is the Law Male? p. 363.

men's violence against women by regulating practices and implementing policies based on false theorising. Thus concluding that attempting to deter rape on an individual basis through legislation alone will never be enough. Instead, we must focus on changing the social and structural foundations of this violence.

Part One

The legal and social meaning of rape

Historically conceptualised through the “purview of ancient masculine codes”, the *Sexual Offences Act* (1956) outlined that a man was found guilty of rape if: (a) he had sexual intercourse (vaginal or anal) with a person who at the time did not consent, (b) knew that the person did not consent or was reckless to whether that person consented to it, and (c) If he induced a married woman to have sexual intercourse with him by impersonating her husband.⁴⁵ Described by one commentator as “cumbersome and inadequate” and “archaic, incoherent and discriminatory”,⁴⁶ the *Sexual Offences Act* (1956) was merely a consolidation of various statutes dating back to the late nineteenth century.⁴⁷

Despite massive legal reform in the forty-seven year period between 1956-2003, such changes have done little to eliminate the pervasive myths surrounding rape that permeates many aspects of the laws governing sexual offences. The law surrounding rape, like any other body of law, criminal or civil, reflects and reinforces certain societal values.⁴⁸ Following amendments made to the *Sexual Offences Act* (1956), *The Sexual Offences Act [SOA]* (2003) redefined the act of rape as the intentional penile-penetration of the vagina, anus or mouth of a

⁴⁵ Legislation.gov.uk (2017) ‘Sexual Offences Act 1956’ (Online) Available: <http://www.legislation.gov.uk/ukpga/Eliz2/4-5/69>, Accessed: 27/09/15.

⁴⁶ Jonathan Herring (2015) ‘Sexual Offences’, *Criminal Law*, 9th edition, (London: Macmillan Publishers) p. 134.

⁴⁷ David Omeron (2011) ‘Sexual Offences’, *Smith and Hogan’s Criminal Law*, 13th Edition, (Oxford University Press: Oxford), p. 716. – Notably the Offences against the Person Act (1861).

⁴⁸ Keith Burgess-Jackson (1996) ‘Conclusion’, *Rape: A Philosophical Investigation*, (Hants: Dartmouth Publishing Company Limited), p. 207.

male or female, without consent or reasonable belief in consent.⁴⁹ This amendment was significant in recognising marital rape, oral penetration, male victims of sexual offences, and consequently decriminalised homosexual offences (buggery).⁵⁰ One of the most noteworthy aspects of the SOA (2003) is that it continued to classify rape as one of the few offences capable of being committed only by a male, therefore establishing a hierarchy of sexual offences rather than just one all-purpose offence. By virtue of not carrying the risks of disease and pregnancy, the SOA (2003) outlines that 'assault by penetration' is criminal, but not 'rape'.⁵¹ This means that it is an offence for a male or female to penetrate the vagina, anus or mouth of another person without their consent.⁵² The Sexual Offences Review found that despite the fact that there was sufficient evidence that a woman *could* force a man to penetrate her against his will, it rejected any suggestion that rape should be redefined to recognise this fact in an attempt to ensure that the offence of rape corresponds broadly with the general public's understanding of the term – "We felt rape was clearly understood by the public as an offence that was committed by men on women and men."⁵³ In some ways, this reasoning appears unusual given that the public have often had unjustified beliefs about criminality, such as laws surrounding the illegality of homosexuality. While the intimate relationship between the law and prevailing social attitudes should not be considered as inherently positive, in this case it appears justified. In emphasising the gendered element of rape, it reduces the ability of the public to falsely conceptualise the reality of rape as somewhat gender neutral.

⁴⁹ The National Archives (2017) 'Sexual Offences Act (2003) c. 42 Part 1' (Online) Available: http://www.legislation.gov.uk/ukpga/2003/42/pdfs/ukpga_20030042_en.pdf, Accessed: 2/2/16.

⁵⁰ The fact that both men and women can be victims of rape was first recognised in 1994 by the *Criminal Justice and Public Order Act* and further consolidated in the SOA (2003).

⁵¹ Parliament UK (2003) 'Memorandum submitted by JUSTICE', Appendix 18, 10th July 2003, (Online) Available: <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmhaff/639/639ap19.htm#note49>, Accessed: 19/04/16.

⁵² Penetration can refer to any part of the body (i.e. fingers, tongue) or anything that is not a body part, but is used for the purpose of penetration with sexual intent.

⁵³ Home Office (2000) 'Setting the Boundaries: Reforming the Law on Sex Offences', vol. I, para 2.8.4, *National Archives*, (Online) Available: <http://webarchive.nationalarchives.gov.uk/+/http://www.homeoffice.gov.uk/documents/vol1main.pdf?view=Binary>, Accessed: 13/07.16.

& David Omeron (2011) 'Sexual Offences', *Smith and Hogan's Criminal Law*, 13th Edition, (Oxford University Press: Oxford), p. 741.

Hierarchy of offences in the legal code

While it is generally accepted that rape involves the forcible sexual penetration of the human body, continuing to define rape gender specifically by penile penetration has attracted widespread criticism for classifying what are deemed to be equal acts of violation into a lesser category.⁵⁴ On one hand, the law's continued equation of rape with penile penetration implies that sexual assaults vary in the nature of seriousness. However, the difference between what is defined as 'rape' and 'assault by penetration' seems negligible given that the assault on the victim's autonomy is hardly diminished by such a slight classificatory distinction. As William Wilson (2014) asserts, "If rape is committed irrespective of the orifice, then why should it not also be committed irrespective of the instrument or the gender of the perpetrator?"⁵⁵ Moreover, while pregnancy, or the fear of it, will undoubtedly exacerbate trauma, the same can be said for the transmission of sexual infections, which are not only required through penile penetration. On the other hand, in aiming to protect vulnerable groups and ensure that the penalties available are commensurate with the gravity of the offence, providing a range of offences rather than a single all-purpose offence allows for the possibility of increasing the numbers of charges, guilty pleas and convictions.⁵⁶ In other words, a hierarchy of sexual offences may ensure that an accused person is charged with a sexual offence of some form rather than with none at all. In terms of specification, this does not mean that the law is necessarily enlightened. As Lord Hansard declared when debating the Sexual Offences Act in parliament - "it is simply no good providing a definition of rape which would satisfy a philosopher or a logician; it has to be readily understood by a jury".⁵⁷ Given that men are the overwhelming perpetrators of sexual offences, the law simply reflects the reality of the act as it happens in our world, in our culture, at this time.

⁵⁴ Alexa Koenig et al (2011) 'The Jurisprudence of Sexual Violence', (Berkeley: University of California).

⁵⁵ William Wilson (2014) 'Rape: The Elements', *Criminal Law*, 5th Edition, (Pearson: Harlow), p. 331.

⁵⁶ Mary Heath (1998) 'Disputed Truths: Australian reform of the sexual conduct elements of common law rape', in Patricia Weiser Easta's (eds.) *Balancing the Scales: Rape, Law Reform and Australian Culture*, (Federation Press), pp. 22-23.

⁵⁷ Lord Hansard (2003) 'Sexual Offences Bill' *Parliamentary Publications*, <http://www.publications.parliament.uk/pa/ld200203/ldhansrd/vo030213/text/30213-09.htm>, Accessed: 13/07/16.

The public's perception of a crime can therefore be seen to have a significant influence on law reform and policy decisions relating to sexual offences by dictating what counts as a legal violation. Given that juries are made up of members of the public and ultimately decide verdicts, this is an important consideration. The instrumental role that the public play in influencing legal definitions and verdicts mean that a misinformed public poses a significant threat to just outcomes for victims. Indeed, public perceptions can be seen to have a profoundly negative impact in the case of rape and other sexual offences. "Institutionalised rape myths" refer to a set of preconceived ideas surrounding who the 'real' victims and perpetrators of rape are.⁵⁸ For example, the paradigmatic 'real rape' commonly refers to scenarios where a stranger attacks an unsuspecting victim in an outdoor location, involving the threat or use of force by the assailant and active physical resistance by the victim⁵⁹. Unfortunately for prosecutors, this type of scenario is uncommon. Although it is extremely difficult to accurately assess the extent of offending due to the very nature of the crime, widespread underreporting and extremely high acquittal rates, evidence demonstrates that this model of how a real rape exists in the public imagination is empirically unfounded. It is estimated that only eight per cent of all rapes are committed by strangers,⁶⁰ only thirty seven per cent of rape victims suffer from a major physical injury⁶¹ and victims of rape are more likely

⁵⁸ See Ellison and Munro (2009) 'Reacting to Rape: Exploring Mock Jurors Assessment of Complainant Credibility, British Journal of Criminology, Vol. 49, No. 1, p. 202 and Natalie Taylor (2007) 'Juror attitudes and biases in sexual assault cases', *Trends and Issues in Crime and Criminal Justice*, Australian Institute of Criminology, No. 344, pp. 1-6.

⁵⁹ Jennifer Temkin and Barbara Krahe (2008) *Sexual Assault and the Justice Gap: A Question of Attitude*, p. 31

⁶⁰ It is estimated that approximately 92% of all rapes are committed by partners, ex-partners, family members and 'others known' to the victim.

See Figure 2.1 – Victim-Offender relationships for serious sexual offences and less serious sexual offences experienced by females in the last year, 2009/10, 2010/11 and 2011/12 CSEW combined: Ministry of Justice, Home Office & Office for National Statistics (2013) 'Victim-offender relationship among male and female victims', *An Overview of Sexual Offending in England and Wales* (Online) Available:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214970/sexual-offending-overview-jan-2013.pdf, Accessed: 09/10/15.

⁶¹ Rape Crisis Centre for Media and Summit Countries. (2015) 'Get the Facts', (Online) Available: <http://www.rccmsc.org/resources/get-the-facts.aspx>, Accessed: 07/5/15.

* A 'major physical injury' is defined as involving a gunshot wound or broken bones.

to be attacked in their own home.⁶² Rape myths paint an unreflective picture of its reality and are unaligned with laws governing sexual offences in England and Wales. Despite this, research demonstrates that rape myths are widely accepted and have worrying implications.⁶³

Rape in the social imagination

Described by Jennifer Temkin and Barbara Krahe (2008) as the “justice gap”, rape myths can be seen to have an insidious influence on every stage of the criminal justice system, from the rate of reporting, victim support and the performance of the jury.⁶⁴ Louise Ellison and Vanessa Munro’s (2009) widely cited study on mock jury deliberations found that rape myths not only influence the plausibility of the allegation, perceived credibility of the complainant and culpability of the alleged offender, but also the whole narrative a juror constructs about a case. For example, in one mock trial, Ellison and Munro (2009) found that jurors exhibited a “strong and, in many cases, unshakeable expectation that a genuine victim of rape would engage in vigorous physical resistance against her attacker, and that, as a result, there would be corroborative evidence of injury on the body of either the complainant or defendant, or both”.⁶⁵ A lack of such features played a profound role in diminishing the credibility of a woman’s claim during deliberations from jurors who expressed that “if she *really* wanted to protect herself, she would have put up more of a fight”.⁶⁶ The unsympathetic public morality of rape in this case appears to suggest that unless there is tangible evidence of a victim being mutilated or brutalised, one is suspected of having provoked, initiated or complied with the sexual interaction. This clear discrepancy between the legal definition of rape, the general public’s understanding of rape, and the reality of rape is extremely problematic as

⁶² Rape Crisis Scotland (2017) ‘Facts About Sexual Violence’, p. 2. (Online) Available: <http://www.rapecrisisscotland.org.uk/linkservid/99679368-C2D4-11E5-BF4A48D705D43CE3/showMeta/0/>, Accessed: 09/12/16.

⁶³ ‘Rape Myths and Domestic Abuse Myths as Hermeneutical Injustices’, *Journal of Applied Philosophy*, Vol. 34, No. 2, p. 193.

⁶⁴ Jennifer Temkin and Barbara Krahe (2008) *Sexual Assault and the Justice Gap: A Question of Attitude*, (Hart Publishing: Oxford).

⁶⁵ Louise Ellison and Vanessa Munro (2014) ‘Briefing Report: ‘Real Rape’ Stereotypes and the Relevance of a Previous Relationship in (Mock) Jury Deliberations’, p. 4, (Online) Available: <http://www.law.leeds.ac.uk/assets/files/Non-Stranger%20Rape%20Study%20-%20Briefing%20Report.pdf>, Accessed: 25/07/16.

⁶⁶ Louise Ellison and Vanessa Munro (2014) ‘Briefing Report: ‘Real Rape’ Stereotypes and the Relevance of a Previous Relationship in (Mock) Jury Deliberations’, p. 4.

cultural stereotypes can be seen to take precedence over the unique features of individual cases by dictating what counts as a *real* violation.

Strictly speaking, jurors are told to assess evidence for the acts that constitute the offence. Suppose jurors believe that non-consensual sex between a man and wife is not 'rape', but they will be told that the law says it is; their role is to work out if the alleged acts occurred, not to dispute the law. How then, can the influence of rape myths in trials be explained? I propose it can be explained partly, if not wholly, by implicit biases. Psychological research strongly suggests that people have two different types of mental representations: explicit and implicit attitudes.⁶⁷ For example, individuals may profess a commitment to gender equality, but still have implicit biases that women are more 'naturally' suited to caregiving and domestic roles. Similarly, jurors may be able to understand that the law says a man can rape his wife, but may implicitly form the belief that the act did not occur, or believe that unwanted sex occurred, but implicitly think that it should not be classified as an act of 'rape'. It is therefore plausible that implicit biases relating to rape change what it is that jurors are supposed to be deciding on. As a result, jurors will, in a sense, be asking the wrong type of questions when they hear evidence. Consequently, the inherent seriousness of rape as an offence and the associated punishment creates a more explicit problem where jurors may be more reliant on tangible evidence in order to be convinced that a crime occurred.

The tendency for jurors to rely on their implicit evaluations is inevitably exacerbated by the very nature of sexual offences. Sexual offences remain one of the most difficult crimes to prosecute within our adversarial legal framework because most acts of men's violence against women occur in private and often lack corroborating evidence, meaning that it is extremely difficult to prove to the Court beyond reasonable doubt, with no other supporting evidence, that a crime was committed. Unlike homicide where there is a body, or burglary where there may be signs of forced entrance, evidence of sexual intercourse and a woman's testimony alone are rarely sufficient to conclude that an offence occurred. A key

⁶⁷ Neil Levy (2016) 'Implicit Bias and Moral Responsibility: Probing the Data', *Philosophy and Phenomenological Research*, Vol. XCIV, No. 1, pp. 3-26.

difficulty here is that while the absence of consent does not necessarily have to be communicated in words or actions (a person being sexually assaulted may freeze, say no or do nothing, but this does not equal consent), jurors may query a claim of non-consent if the complainant did not verbalise it or physically resist. Moreover, in facing a judge, several barristers, a jury and members of the public, complainants often describe their experience in court as a “second rape”. Defence lawyers during cross examinations are able to prey upon a victim’s inability to accurately recall the event, to the extent that it becomes conflated with a lack of credibility and weakness in their story, making it very difficult for rape victims to utter the words needed to secure a conviction.⁶⁸ Rape myths inevitably allow for jurors to draw upon dominant narratives of men’s violence against women and draw inferences based on deeply rehearsed cultural assumptions surrounding how women *should* behave where evidence in a court case is unclear or unavailable. The seriousness of rape and the minimum sentence of five years means that jurors may rely more heavily on physical evidence to help form a consensus. The combination of implicit biases and the evidential difficulties associated with rape makes it a particularly difficult crime for the legal system to adequately address.

Even in rare cases where there are eye witnesses, physical evidence and a recent complaint, both jurors and judges continue to display a reluctance to convict and sentence young, white men who deviate from cultural depictions of rapists as perverted and psychologically disturbed men. For example, in March last year, twenty-year old student Brock Turner was convicted on all three counts of felony sexual assault following an incident on 18th January 2015, where two Stanford University graduate students caught Turner sexually penetrating a half-naked unconscious woman with his fingers. Described as an “All-American swimmer” with a “squeaky clean image”, Brock was convicted to only six months imprisonment after Judge Aaron Perksy stated that anything more would have a “severe impact on Turner’s future”. As a commentator on the case astutely identified, “If you ask someone on the street what a rapist looks like, they’ll tell you a stranger with a ski mask and a gun. You get this superstar athlete white kid from a fancy university, and he doesn’t fit that

⁶⁸ Zsuzsanah Adler (1987) ‘Rape Cases at the Old Bailey’, *Rape on Trial*, (London: Routledge), p. 51.

image”.⁶⁹ In circumscribing the validity of all women’s experiences of rape based on deeply embedded social prejudices, courts risk assessing the severity of rape based on conditions that are not relevant or appropriate. In determining what constitutes a ‘real rape’ by considering the factors of location, physical injury and the time taken to report the offence, rape myths reinforce the problematic belief that the value of consent is contingent upon the perceived credibility of the alleged offender, or a woman’s status, appearance or behaviour – the victim’s degree of resistance, consumption of alcohol, and the time of day and place of the attack.⁷⁰ The discrepancy between normative expectations and reality is problematic as it makes it difficult for victims to convince officials that a rape was really a rape and blinds jurors in their attempt to invoke an array of empirically unfounded assumptions concerning ‘appropriate’ behaviour and misconceptions concerning the capacity of victims to physically resist an attack.⁷¹

Much of the focus here has been placed on the limitations of juries in rape trials and not on the problems rape myths create for victims of sexual offences. If individual victims hold the same problematic understandings of rape, it is important to consider how societal misconceptions may play a role in preventing them from fully comprehending their experience and placing it in the reality of what actually happened.⁷² Katherine Jenkins (2016) defines this phenomenon as a ‘hermeneutical injustice’, whereby somebody has a significant area of their social experience obscured from understanding due to “prejudicial flaws in shared resources for social interpretation”.⁷³ In light of the social acceptance of rape myths, is it then possible for a woman to have been raped or sexually abused and not know it? And what does it say about our culture that there can be so much ambiguity between rape and sex? Dominant discourses on men’s

⁶⁹ Danielle Paquette (2016) ‘What makes the Stanford sex offender’s six month jail sentence so unusual, *The Washington Post*, 6th June 2016, (Online) Available: https://www.washingtonpost.com/news/wonk/wp/2016/06/06/what-makes-the-stanford-sex-offenders-six-month-jail-sentence-so-unusual/?utm_term=.f8ef2dfff4e3, Accessed: 07/06/16.

⁷⁰ Julia Quilter (2011) ‘Re-framing the rape trial: insights from critical theory about the limitations of legislative reform’, *The Australian Feminist Law Journal*, vol. 35, p. 34.

⁷¹ Louise Ellison and Vanessa Munro (2013) ‘Real Rape’ Stereotypes and the Relevance of a Previous Relationship in (Mock) Jury Deliberations’.

⁷² Katharine Jenkins (2016) ‘Rape Myths and Domestic Abuse Myths as Hermeneutical Injustices’, p. 195.

⁷³ *Ibid*, p. 191.

violence against women reflect a stealthy, yet significant power in shaping how we collectively define and understand what constitutes an act of rape. For example, a woman may describe an experience of unwanted sexual intercourse with her partner that by all accounts fits the legal definition of rape. However, due to the fact that mainstream discourses on rape tend to focus exclusively on sensationalised images of sexual offences whereby women are raped by a deranged stranger involving bodily harm, she may not label it as such. Consequently, her acceptance of rape myths affects her interpretation of her own experience when the abuse did not take the form of severe physical violence and wasn't perpetrated by someone unknown to her. Given that over 90% of women know their perpetrators, this is an important consideration.⁷⁴ The prevalence of rape acceptance myths in mainstream discourse obscure and distort the reality of women's everyday experiences of sexual violence, thereby maintaining a routine invisibility of men's violence against women.

In influencing both women's understandings of their own experience and jurors interpretations of the evidence, the existence of rape myths further obstructs the administration of justice by creating a restrictive criteria for what types of cases make it to courts in the first place. Of the estimated 85,000 victims of rape per year in the UK, under 20% of these rapes are recorded by the police, with just 3.5% taken to court and a mere 1.2% leading to a conviction.⁷⁵ Once rape cases reach the Crown Prosecution Service (CPS), prosecutors have a duty to assess the credibility and reliability of the victim in order to determine whether there is enough evidence to prosecute.⁷⁶ Based on explicit assumptions of how the judge and jury are likely to perceive the complainant and her story; a lack of

⁷⁴ See Figure 2.1 – Victim-Offender relationships for serious sexual offences and less serious sexual offences experienced by females in the last year, 2009/10, 2010/11 and 2011/12 CSEW combined: Ministry of Justice, Home Office & Office for National Statistics (2013) 'Victim-offender relationship among male and female victims', *An Overview of Sexual Offending in England and Wales* (Online) Available: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214970/sexual-offending-overview-jan-2013.pdf, Accessed: 09/10/15.

⁷⁵ Ministry of Justice (2013) *An Overview of Sexual Offending in England and Wales*, Figure 1.1, p. 7.

⁷⁶ Crown Prosecution Service (2012) 'CPS Policy for Prosecuting Cases of Rape', (Online) Available: https://www.cps.gov.uk/publications/prosecution/rape.html#_05, Accessed: 09/10/16.

medical evidence,⁷⁷ a delay in reporting the offence, prior relationship with the defendant, alcohol consumption, and the character of the complainant (appearance and respectability) are all factors that are considered “serious setbacks” for prosecutors.⁷⁸ All of the considerations above reflect societal misconceptions surrounding what a ‘real’ rape involves and the problematic requisite for physical evidence. A case may not proceed if there is not enough evidence to meet the evidential stage of the ‘Code Test’.⁷⁹ In understanding the gap between the 15,670 cases that are recorded by the police and the astonishingly low number of the 2,910 cases that are taken to court, it is clear that rape myths have an insidious influence in manipulating the standards of truth used to determine which cases are pursued. In a sense, the legal system requires a certain level of severity (in direct relation to rape myths) in order to make a rape claim plausible, therefore barring many women from being legally acknowledged as victims of rape and pursuing justice against their perpetrator. This point is supported by the fact that one of the most frequently cited reasons for not reporting was because women believed that their experience was “too trivial” or just simply “not worth reporting.”⁸⁰

The persistence of social misconceptions surrounding sexual offences can therefore be seen to play a considerable role in making the plausibility of rape claims contingent upon one’s position in society and their ability to fit the model of the ‘ideal victim’. This is extremely problematic as cultural understandings of rape dictate and legitimise a tunnel vision approach to rape trials by perpetuating a particular kind of cultural ‘truth’ to the systematic exclusion of lived experiences of sexual violence. In countering the effects of rape myths, Western courts have introduced the use of expert witnesses in order to dispel some of the common misconceptions surrounding what constitutes ‘normal’

⁷⁷ Even strong medical evidence of injury is still often lacking as a sufficient form of evidence – damage to vaginal tissue or tearing could be said to be equally consistent with that of a consensual sexual interaction.

⁷⁸ Jennifer Temkin (2000) ‘Prosecuting and Defending Rape: Perspectives from the Bar’, *Journal of Law & Society*, Vol. 27, No. 2.

⁷⁹ Crown Prosecution Service (2017) ‘Code for Crown Prosecutors’, (Online Available: https://www.cps.gov.uk/publications/code_for_crown_prosecutors/codetest.html), Accessed: 02/03/16.

⁸⁰ Ministry of Justice (2013) *An Overview of Sexual Offending in England and Wales*, p. 27.

behaviour consistent with that of a 'real' rape victim.⁸¹ The introduction of expert witnesses has been important in restoring the credibility of rape victims by ensuring that stereotypes surrounding rape do not take precedence over the unique features of individual cases. However, rape cases continue to have one of the highest acquittal rates of all crimes and research continues to demonstrate that complainants still struggle to gain credibility in eyes of the police, prosecutors and jurors.⁸² Given that victims, jurors and individuals who work within crime prosecution interpret what they see in light of their own beliefs, experiences and expectations, we need to know what these belief structures are and how they directly impact judgements in rape trials and victims of sexual offences if conviction rates are to improve. Until then, justice cannot be pursued, processes of the victim's healing may be delayed or prevented entirely, and crucial protective steps that aim to address the underlying causes of men's violence against women may not be followed.

Part one of this Chapter has argued that the act of rape and the legal rules that govern sexual offences cannot be understood in isolation from the dominant norms, values and practices of any given culture. Drawing upon common rape myths as a primary example, I've established that there are striking differences among jurors and their interpretation of the law, thus demonstrating that while legislative reform has been significant, broader socio—cultural reforms are necessary if women are to have any confidence in the criminal justice system. In part two, I will go into finer detail to demonstrate how legal principles are applied. Focusing specifically on consent, I will argue that while the law upholds the idealistic image of men and women as equal agents, until social institutions follow, the law remains limited in its capacity to encourage reporting and successfully prosecute acts of rape.

Part Two

⁸¹ Julia Quitler (2011) 'Re-framing the rape trial', p. 25.

⁸² Louise Ellison (2005) 'Closing the credibility gap: The prosecutorial use of expert witness testimony in sexual assault cases', *International Journal of Evidence and Proof*, Vol. 9, No. 4, p. 239.

The question of consent

The legal rules and procedures that currently govern sexual offences have developed in subtle, complex and interesting ways.⁸³ For centuries, consent did not draw the dividing line between rightful and wrongful sexual acts. Moral and legal assessments depended on marital status and the nature of the sexual act, often in reference to religious laws. Sexual activities were considered wrongful if they were deemed to be an affront to male privilege and property. During this time, consent could not possibly have been paramount to sex because a recognition of women's sexual autonomy was socially, politically and legally non-existent. As Patricia Smith (1999) highlights "one earth-shattering change in modern society has been the decline during the past two centuries of the general view of women as property and the emergence of the idea of women as autonomous (or at least individual) human beings with interests of their own".⁸⁴ It is therefore a relatively new idea that consent by all persons involved can suffice to make a sexual encounter morally permissible and that a lack of consent constitutes serious wrongdoing that may warrant criminal punishment.

Coinciding with the development of modern liberal democratic societies, the increased value placed on individual sovereignty has allowed for the notion of consent to have significant moral force.⁸⁵ Consent serves two overlapping functions. Firstly, consent serves a protective function in safeguarding individuals from unauthorised invasions of their body and property.⁸⁶ Secondly, consent makes interpersonal conduct that would otherwise be considered prohibited or wrongful, permissible. Heidi Hurd (2013) describes the normative power of consent as "moral magic" in its ability to transform the morality of another person's conduct. Socially, we value having this control, and other people respecting this control. In a sense, it allows us to restrict the bodily interference of others.

⁸³ Keith Burgess-Jackson (1999) 'A History of Rape Law', *A Most Detestable Crime*, p. 15.

⁸⁴ Patricia Smith (1999) 'Social Revolution and the Persistence of Rape', *A Most Detestable Crime*, p. 32.

⁸⁵ John Kleinig (2010) 'The Nature of Consent', in Franklin G Miller & Alan Wertheimer's (eds.) *The Ethics of Consent*, (Oxford: Oxford University Press), p. 3.

⁸⁶ Franklin G. Miller & Alan Wertheimer (2010) 'The Ethics of Consent: Theory and Practice', in Franklin G Miller & Alan Wertheimer's (eds.) *The Ethics of Consent*, (Oxford University Press: Oxford), p. ix.

Given the strong rhetorical and transformative power of consent, it is no surprise that rape has come to be conventionally defined as “sex without the consent of the victim”.⁸⁷ However, the primary use of consent in medical and legal contexts has limited mainstream understandings of consent almost entirely to notions of *informed* consent,⁸⁸ which cannot be easily transposed to intimate situations. Unlike signing a medical consent form, expressions of consent in sexual relations can be ambiguous and often fail to meet the criteria of consent as competent, voluntary and informed, therefore making it difficult to definitively determine the difference between sex and rape based on the minimum legal requirement of consent alone. While it remains uncontroversial that it is both legally and morally impermissible to engage in sexual relations without consent, locating the boundary between sex and rape calls for some clarification. Despite the obvious problem that this definition poses in suggesting that sex is wrongful if, and only if, there is an absence of an ‘agreement’, the concept of consent itself provides several practical and theoretical challenges. In redefining rape broadly as non-consensual sex, current laws have opened a new host of questions concerning the definition of ‘consent’. For example, what does consent fundamentally consist of? What conditions make consent morally and legally transformative? And lastly, is consent really all that’s needed to distinguish sex from rape?⁸⁹

Legally, consent has two main components. Firstly, it outlines who has the capacity to give consent, and secondly, it broadly identifies what counts as consent. According to section 74 of the SOA (2003) consent is broadly defined as whether the individual “agrees by choice, and has the freedom and capacity to make that choice”.⁹⁰ Prosecutors consider this in two stages:

i. Whether a complainant had the relevant capacities (i.e. age and

⁸⁷ Archard, D. (2007) ‘The Wrong of Rape’, *The Philosophical Quarterly*, Vol. 57, No. 228, p. 374.

⁸⁸ Tom Beauchamp (2010) ‘Consent and Autonomy’, Franklin G Miller & Alan Wertheimer’s (eds.) *The Ethics of Consent*, (Oxford: Oxford University Press), 57.

⁸⁹ Alan Wertheimer (2003) ‘Introduction’, *Consent to Sexual Relations* (Cambridge: Cambridge University Press), pp. 1-11.

Robin West (1996) ‘A Comment on Consent, Sex and Rape’, *Legal Theory* 2, p. 234

⁹⁰ Legislation.gov.uk (2017) ‘s 74: Consent’, (Online) Available: <http://www.legislation.gov.uk/ukpga/2003/42/section/74>, Accessed: 18/09/15.

understanding) to make a choice about whether or not to take part in a sexual activity at the time in question. The question of capacity to consent is also particularly relevant when a complainant is intoxicated by alcohol or affected by drugs.

ii. Whether he or she was in a position to make that choice freely, and was not unduly constrained.⁹¹

Therefore, sex that is coerced⁹² and sex that is imposed on a minor, the unconscious, intoxicated or mentally incapacitated are all legally understood as some degree of sexual assault.

Over the past three decades, there has been a growing disenchantment among legal and feminist scholars with the use of consent as the primary criterion for defining and understanding rape.⁹³ Traditionally, it has been a woman's responsibility to communicate her non-consent to sexual activity. For example, in the United States, a rape conviction required evidence of the "utmost resistance" from victims until the 1980s in some jurisdictions.⁹⁴ Given this requirement, a failure to protect oneself with the "utmost resistance" was equated with consenting to the sexual interaction, thereby protecting men's interests in sexual access by making it difficult to obtain a criminal charge for rape unless there was sufficient evidence of a physical struggle. As noted in part one, jurors still remain sceptical of victims who haven't engaged in physical resistance and show tangible evidence of the altercation. Indeed, a negative standard of consent based only on the absence of overt resistance among women to men's sexual advances remains a powerful social norm.⁹⁵ However,

⁹¹ The Crown Prosecution Service (2015) 'Statutory Definition of Consent' (Online) Available: http://www.cps.gov.uk/legal/p_to_r/rape_and_sexual_offences/consent/, pp. 2-3, Accessed: 18/09/15.

⁹² 'Coerced' sex may refer to (but is not limited to) to cases where there is an implied or real threat of future violence and emotional manipulation such as "if you don't have sex with me, I'll break up with you" or "If you really loved me you'd have sex with me".

⁹³ Keith Burgess-Jackson (1999) 'Introduction', in Keith Burgess-Jackson (eds.) *A Most Detestable Crime*, (Oxford University Press: Oxford), p. 6

⁹⁴ Joan McGregor (2011) 'The Legal Heritage of the Crime of Rape', *Handbook on Sexual Violence*, (Online) Available: <https://www.routledgehandbooks.com/doi/10.4324/9780203802434.ch3>, Accessed: 13/03/17.

⁹⁵ In two sets of interviews conducted with young adults from New Zealand about how they negotiated their sexual experiences and how they define sexual consent, participants frequently talked about consent as a lack of resistance. One participant stated "I guess consensual sex is just when the girl doesn't say no", therefore demonstrating that men continue to rely on problematic indicators of consent such as the absence of resistance, body language or previous

a 'positive standard' of 'free agreement' is now being called for, and also men's role in managing and negotiating this agreement. Crucially, the law seeks to define consent objectively based on the explicit assumption that each party possesses the requisite autonomy to reject the terms of contracts that are not in their best interests or simply do not want. As defined in section 74 of the SOA, consent is based on the idealistic principle that all individuals are equal, rational and autonomous agents. The use of the words 'choice', 'freedom', and 'capacity' reflect a commitment to a communicative model of sexuality based on an implied sense of mutual agreement and expectation of reciprocal responsibilities. The "no means no" messages of previous consent campaigns are now being replaced with "yes means yes" and "sex is only sexy when both people want it".⁹⁶ In many ways, the shift in law towards a positive standard of consent is to be welcomed. To some degree, it holds potential perpetrators of sexual assault accountable to a high standard, whereby both men and women must take reasonable steps to ensure that consent was given and obtained. Proponents who uphold a positive standard argue that consent amounts to a simple duty: all he or she has to do is express themselves clearly. Indeed, communicating "yes" or "no" to sex does not appear to be an unreasonable or unduly challenging demand.

Given that the process of law reform surrounding sexual offences has accelerated so rapidly over the past four decades, educating the public on sexual behaviour not previously considered a crime has been placed firmly on the public agenda among UK law enforcement agencies and activist organisations in recent years. For example, in February this year, Devon and Cornwall Police were one among many departments to launch 'The Good Consent Guide' campaign to raise awareness on giving and obtaining consent. With an explicit commitment to a communicative model of sexuality, the campaign aims to promote the view that there are "#noblurredlines" when it

sexual activity. While the limited sample size means that this research is not generalisable, it provides a valuable insight into the disconnect between the new legal approach to consent and how young people understand and communicate consent to sex.

See Melanie Ann Beres (2015) 'Rethinking the concept of consent for anti-sexual violence activism and education', *Feminism and Psychology*, Vol. 24, no. 3, pp. 380-381.

⁹⁶ Spring Lodge (2015) 'No means No – Lincolnshire Police Consent Campaign', (Online) Available: <http://www.springlodge.org/campaigns/no-means-no/>, Accessed: 12/10/16.

comes to sex in order to prevent crime, reduce the number of incidences through raising awareness, and to encourage reporting both to police and partner agencies.⁹⁷ Similarly, in collaboration with the Crown Prosecution Service and Thames Valley Sexual Violence Prevention group, Thames Valley Police Department used the popular 'Sexual Consent and Tea' video to launch their "#ConsentIsEverything" campaign.⁹⁸ The three minute animated video explains how understanding sexual consent is as straightforward as making a cup of tea for a visitor. Towards the end, viewers are asked:

If you can understand how completely ludicrous it is to force people to have tea when they don't want tea, and you are able to understand when people do want tea, then how is it so hard to understand when it comes to sex?⁹⁹

Following the increasing trend to remove any 'gray' areas surrounding consent and educate the public based on a positive standard, this clear, simple, and accessible analogy is intended to be effective in educating the public on the minimum requirement for legally permissible sex. Detective Chief Inspector Justin Fletcher from Thames Valley Police confidently claims "Together we can prevent rape by ensuring everyone knows when they have sexual consent".¹⁰⁰ While it is clear that procedural care needs to be taken in order to ensure that the public are well aware of the legal requirement for non-criminal sex, operating on the explicit assumption that educating people on the legal definition of consent alone will somehow end sexual violence is fundamentally misguided. It is very easy to say yes or no to a cup of tea, and very easy to offer a cup of tea. This is precisely because a cup of tea is not part of your body, identity, or wrapped in wider socio-cultural constructions of genders and

⁹⁷ Devon and Cornwall Police (2016) 'Police launch the Good Consent Guide' (Online) Available: <https://www.devon-cornwall.police.uk/News/NewsArticle.aspx?id=fe2cdfd4-0bd0-4e36-9148-524b84871d80>, Accessed: 11/04/16

⁹⁸ Thames Valley Police (2015) '#ConsentIsEverything Campaign' (Online) Available: <http://www.thamesvalley.police.uk/crime-prevention/keeping-safe/consent-is-everything.htm>, Accessed: 12/04/16.

⁹⁹ Thames Valley Police (2016) 'Tea and Consent', Made by *Blue Beat Studios* and *rockstardinosaurpirateprincess* (Online) Available: <https://www.youtube.com/watch?v=pZwvrxVavnQ>, Accessed: 12/04/16.

¹⁰⁰ Thames Valley Police (2015) 'Thames Valley Police and partners launch #ConsentIsEverything Campaign', 27th October, (Online) Available: <http://www.thamesvalley.police.uk/newsevents-pressreleases-item.htm?id=323259>, Accessed: 12/04/16.

sexualities. Perhaps if consent was as simple as giving or asking for a cup of tea, then cases of sexual violence would not be so prevalent and widespread.

While most people can grasp the legal definition of consent, research demonstrates that they simply fail to see how it applies to them. Michael Flood (2011) observes that “among young men most invested in notions of male sexual entitlement, the biggest obstacle to practicing consent is not that they don’t know how, but that they do not feel the need to do so.”¹⁰¹ In other words, it is not a case of “I wonder if she’d like to have a cup of tea with me”, it is “I want a cup of tea and I’m going to have one with her”. In many ways, the irrelevance of consent stems from the way in which ordinary men are taught to behave and see women which makes a woman’s choice or active participation seem secondary. This is not to say that a focus on consent is necessarily misguided. Rather, that using a strict legal definition in educational campaigns is too detached from reality and therefore largely ineffective.

Perhaps practicing consent is in some ways analogous to drink driving. While most people are able to articulate why drink driving is wrong, it is only considered wrong over a certain level (both legally and through personal discretion). Consequently, campaigns which emphasise the message as ‘don’t drink and drive’ enable readers of this message to exercise discretion with its interpretation. One can simultaneously agree that drink driving is bad yet feel it is okay to have two glasses of wine before driving home. The problem with drink driving, like consent campaigns, is that it uses an objective criteria that is too unreflective of everyday practices and allows one’s own practices to go unexamined. Most men would agree that sex without consent is abhorrent but could simultaneously fail to ensure consent is present in their own sexual relations. As Fee Scott from Devon Rape Crisis and Sexual Abuse Services states, campaigns like the tea and consent video allow for people to say “yeah

¹⁰¹ Rachel King (2011) ‘Reflecting on sexual ethics and sexual assault prevention education’, an Interview with Dr Michael Flood, *Australian Institute of Family Studies*, No. 26, p. 14.

yeah yeah absolutely, not me though".¹⁰² A man may continue to drink two glasses of wine and drive home every day for the rest of his life, similarly, a man may continue to never actively ensure consent but believe his sexual encounters are consensual. In both cases, emphasising the legal standard of consent or drink driving do little to change his individual behaviour. When campaigns portray consent or non-consent as objective features, they fundamentally miss how most people understand and communicate consent to sex. They also allow for men to only consider clear cut cases, for example sex with an unconscious woman, instead of the complexities of communicating consent that may be relevant to their own sexual experiences. This is significant as it means that the harmful, everyday practices of non-consent fail to be subject to critical reflection. Consequently, a strict adherence to the legal definition would mean that many more men than previously thought may be either committing or are in danger of committing rape.

Moreover, it is important to highlight here what a truly ambitious model of consent this is. To have the freedom, capacity and choice required to consent to sex, decision-makers would need to know all the relevant facts, be competent to assess them, and be capable of asserting themselves against others. Humans in real life hardly ever conform to this ideal. Imagine a situation where consent to sex is made between parties who are equal in power and knowledge; who are identically socially, economically and politically situated. A contract like this would leave no room for coercion, deception and unfair advantages. The law idealistically defines consent like this situation, as if an individual's capacity to consent to sex can be categorised objectively.¹⁰³ A seemingly obvious point here is that people in real life are situated differently, meaning that differences in knowledge and bargaining power are common. As long as this is the case, the ideal of an agreement among equals does not by itself, guarantee the ethicality of the sexual conduct. Having addressed the criteria for non-criminal

¹⁰² Fee Scott Interview, Chief Executive Officer of Devon Rape Crisis and Sexual Abuse Services

27th September 2016 [See Appendix Document 3].

¹⁰³ Karene M. Boos & Eric J. Boos. (2004) 'At the Intersection of Law and Morality: A Descriptive Sociology of the Effectiveness of Informed Consent Law', *Journal of Law in Society*, Vol. 15, no. 1, p. 459.

sex, I will now explore whether consent is a meaningful criterion for morally permissible sex.

There are real challenges in establishing a positive standard of consent based on voluntary agreement as such an objective standard also fails to recognise the contextual factors within which sexual relations may take place. Given that consent is understood as an exercise in individual autonomy, it is important to consider whether conditions of social oppression or unequal power relations undermine its legitimacy or cast doubt upon the legal permissibility of the act. As identified in clause two: section 74 of the SOA, consent is not given unless it is given freely.¹⁰⁴ In expressing concerns about the role of gender-based power in sexual relations, feminist theorists have long called into question whether a woman's consent can ever be free, informed and valid under the "coercive conditions of a sexist society".¹⁰⁵ In stating that "a lot of not-saying-no passes for consent to sex",¹⁰⁶ Catharine MacKinnon (1989) made a pivotal contribution to our understandings of rape (and heterosexual sex more broadly) by highlighting that while consent can include sex that is wanted, it can also include sex that is unwanted and forced by inequality. In other words, for MacKinnon, the issue of consent for women under the law is that all sexual relations between men and women occur within a realm of power that actively places women in a subordinate position.

In drawing attention to the relevant forces and pressures that may render a woman's "yes" as something coerced rather than freely given, MacKinnon and so-called "radical" feminists alike are often accused of condemning all heterosexual sex as rape. However, MacKinnon does not mean to say that women are incapable of having voluntary sex in male-female sexual relations, or imply that women cannot tell the difference. In an interview with MacKinnon published in the *Guardian* newspaper in 2006, the interviewer asks, "Doesn't

¹⁰⁴ The Crown Prosecution Service (2015) 'Statutory Definition of Consent' (Online) Available: http://www.cps.gov.uk/legal/p_to_r/rape_and_sexual_offences/consent/, pp. 2-3, Accessed: 18/09/15.

¹⁰⁵ Jeffrey A. Gauthier (1999) 'Consent, Coercion and Sexual Autonomy', p. 72.

¹⁰⁶ Catharine MacKinnon (2007) 'Unequal Sex', *Women's Lives, Men's Laws*, (London: Harvard University Press), p. 243.

what you have said make any heterosexual act problematic?" To which MacKinnon replies, "It problematises those that take place under conditions of sex inequality, yes. In a certain structural sense. In the same way that, say, friendships between black and white people in societies that are racist do...People work it out with great difficulty. But the first step is not to deny that it's there."¹⁰⁷ In conflating the distinction between sex and rape, MacKinnon's claim isn't merely hyperbole, such a claim is intended to push the reader or listener to a re-examination of the orthodox view. In this case, to re-evaluate the view that consensual sex is always morally permissible by virtue of being consensual.

For my discussion, the insight of MacKinnon's argument is two-fold. Firstly, MacKinnon accounts for the very real fact that simply saying "yes" to sex does not necessarily capture a *willingness* to engage in sex. As Robin West identifies (2010), there is an ambiguity and hence complexity in the phrase 'consensual sex'.¹⁰⁸ Consensual sex may include sex that is actively wanted and desired, and also sex that is consensual but unwanted. Drawing upon interviews with heterosexual women, Nicola Gavey (2005) supports this claim and proposes the existence of a "gray area" in sexual relations, whereby women may consent to sex, but did so because they did not feel they had a choice.¹⁰⁹ Importantly, Gavey is not referring to cases of hermeneutical injustices as identified by Katharine Jenkins, where women have been victims of a serious sexual assault but fail to label their experience correctly. Rather, Gavey maintains that there is an ambiguity between some heterosexual sex and rape – an ambiguity in everyday, taken-for-granted experiences of 'consensual sex' that may not rise to the criminal category of sexual assault, but are at the very least morally questionable.

¹⁰⁷ Stuart Jeffries (2006) 'Are women human? An interview with Catharine MacKinnon', *The Guardian*, 12th April 2006, (Online) Available: <https://www.theguardian.com/world/2006/apr/12/gender.politicsphilosophyandsociety>, Accessed: 14/11/16.

¹⁰⁸ Robin West (2010) 'Sex, Law and Consent', *The Ethics of Consent*, p. 235.

¹⁰⁹ Nicola Gavey (2005) 'Unsexy Sex: Unwanted Sex, Sexual Coercion, and Rape', in *The Cultural Scaffolding of Rape*, (New York: Routledge), pp. 136-168.

One may experience difficulty in understanding why a woman would repeatedly engage in unwanted and unpleasing sex. However, as West (2010) identifies, married women are a primary example.¹¹⁰ A married woman's consent to sex was not required by law in the UK until 1991. Until then, the importance of a married woman's sexual autonomy was irrelevant and minimised by both the law and powerful social norms. While legal immunity no longer exists, within patriarchal structures 'consensual' but undesired sex within marriage may be attributed to: an understanding of the requirement of wifely duties, financial dependence, to avoid a hassle or fight, or simply because she cares for a partner who really wants to have sex. Similarly, there are a myriad of reasons why heterosexual women generally may engage in unwanted 'consensual' sex – to gain the approval of their peers, fear of abandonment or violence, out of self-interest to get a job promotion, or because they simply have been taught to do so.¹¹¹ While women of course still have the capacity for individual choice, they may make decisions to consent to sex within a limited framework shaped by social, political and economic disadvantage.

Secondly, MacKinnon demonstrates that there are distinct conceptual similarities between what is legally defined as rape and what is often eroticised as desirable types of heterosexual sex. MacKinnon (1989) states that "women live in sexual objectification the way that fish live in water... the question is, what can life as a woman mean? What can sex mean to targeted survivors of rape culture?"¹¹² In other words, there are many complex ways in which women are also socialised in the institution of rape. Devaluing and disrespecting women through sexual penetration remains a consistent theme in our cultural depictions of sexual interactions. Within dominant discourses and representations of heterosexuality, we have culturally constructed the idea that

¹¹⁰ Robin West (2010) 'Sex, Law and Consent', *The Ethics of Consent*, p. 236.

¹¹¹ As identified in the next paragraph, women too are socialised in the institution of rape. The recognition that a fear of male violence operates in an everyday sense highlights how it inevitably shapes how women respond to certain demands from men – even ordinary non-violent men. Women know that saying "no" to sex may provoke a particular type of anger. Similarly to ending a relationship, it is understood as a challenge to manhood. However, a real or implied threat of violence would be too simplistic a view of male power, this is clearly not the only reason why women would engage in consensual, unwanted sex. It seems that more common is women's desire to please their male partner due to cultural expectations of feminine conduct and due to their economic or emotional dependence on them.

¹¹² Catherine MacKinnon (1989) *Towards a Feminist Theory of State*, pp. 147-148.

sex with a woman who is unwilling can be erotic - that it is okay for men not to take no for an answer, to ignore women's signs of disinterest and push past resistance.¹¹³ Women too may take on a set of ideas about gender and sexuality which may increase the likelihood of their own victimisation. For example, heterosexual women learn an investment in being seen as desirable by men and an ethic of sexual service where women learn the role of putting the needs of their male partner first.¹¹⁴ Women may put up with and go along with sexual interactions that are in fact coercive, abusive, or at least very unhealthy. There are an array of heterosexual interactions that would satisfy the legal definition of rape, but are heavily normalised and conventionally understood as typical features of heterosexual sex.

Despite these conceptual similarities, it does not follow that consensual and non-consensual sex are in all ways the same. Dripps (1992) and West (1999), among other feminists, justifiably express the concern that conflating all acts of unwanted consensual sex with rape may trivialise men's violence against women.¹¹⁵ Of course, there is a real, and presumably felt difference between coercive factors that elicit consent (consensual, but unwanted sex) and coercive force by a perpetrator who overrides and ignores a lack of consent or exploits a situation where the individual's capacity to consent is inoperative (rape or sexual assault). Rape is coercive in an entirely different way. However, it is clear that framing the ethical distinction between the presence and absence of consent alone is insufficient. In asking what distinguishes heterosexual interactions in the gray area from acts that constitute sexual assault, Ann Cahill (2016) was the first to provide a theoretical account of how the two categories differ by exploring how women's sexual agency is deployed in each interaction.¹¹⁶ Cahill highlights that interactions in the gray area are marked by the presence of a split will, where women usually display a hesitant, reluctant or ambivalent kind of willingness. Although this can be seen as more of a concession rather than an active affirmation of consent, unlike cases of rape or

¹¹³ Michael Flood (2016) Interview, Friday 29th July 2016, [Appendix: See Document 4].

¹¹⁴ Michael Flood (2016) Interview, [Appendix: See Document 2].

¹¹⁵ Donald A. Dripps (1992) 'Beyond Rape: An Essay on the Difference between the Presence of Force and the Absence of Consent', *Columbia Law Review*, Vol. 92, No. 7, pp. 1780-1809.

¹¹⁶ Ann Cahill (2016) 'Unjust Sex vs. Rape', *Hypatia*, Vol. 31, No. 4, pp. 746-761.

sexual assault, women in these situations are still making a contribution to the interaction. In other words, a woman's sexual agency is in play, but in a *weak* and passive way. While Cahill notes that there is a phenomenological distinction given that women do not always feel harmed when they have sex in the gray area, she avoids concluding that instances of rape are clearly more harmful to individuals than instances of unjust sex. Similarly to Cahill, I am also wary of hierarchising the harm of each interaction. While the wrong and harm of rape and sex will be discussed more closely in chapter 2, the tension between these two categories is significant because it demonstrates that the legal construct of consent as the sharp dividing line between rape and sex is unable to provide a sound ethical basis for sexual interactions and fails to correspond to women's everyday experiences of heterosexual sex.

Mackinnon's argument is significant as it highlights the various ways in which power operates through contemporary cultural norms to render some choices unequal, therefore casting doubt upon the extent to which we can rely on the "moral magic"¹¹⁷ of consent alone to redeem a sexual act. The unilateral nature of consent can therefore allow for gendered power to take precedence over the value of the agreement. As a consequence, women may experience and even desire sex that is forceful, violent, degrading and humiliating, but not question it as being problematic. West (2010) argues that the commonality of sexual experiences in the gray area among women *might* do more widespread harm in the aggregate in the same way that economic exploitation *might* do more long-lasting damage than an individual experience of theft.¹¹⁸ Legally, women's capacity to consent is assumed to be equal to men. However, this assumption is actually unfair in a society where institutional respect for women's sexual autonomy is largely absent. While an egalitarian basis for consent to sex is an ideal that we as a society should strive towards, the practical application of a positive standard of consent seems inevitably thwarted by unequal power relationships, the absence of strong norms promoting sexual negotiation, and

¹¹⁷ Heidi M. Hurd (1996) 'The Moral Magic of Consent', *Legal Theory* 2, pp. 121-146.

¹¹⁸ Robin West (2010) 'Sex, Law and Consent', *The Ethics of Consent*, pp. 226-227.

an increasing pornographic culture based on sexist narratives of male sexual prowess and female submission.¹¹⁹

In combating the difficulty of establishing the *actus reus* of a rape based on the absence of consent alone, the law also requires the *intention* to penetrate the vagina, anus or mouth of another person.¹²⁰ While it is unanimously accepted that an assessment of an individual's state of mind is necessary for criminal liability, determining the *mens rea* of someone accused of rape is not always straightforward.¹²¹ For example, is failing to obtain consent the same as intending to engage in non-consensual intercourse? In the widely cited *DPP v Morgan* [1976] case, three appellants were convicted of rape following an incident that occurred on a night out drinking with a fellow officer in the Royal Air Force, who invited them back to his house to have sexual intercourse with his wife while he watched. According to the appellants, he had told them that his wife would be consenting, although "she was kinky" and would protest in order to enhance her sexual arousal.¹²² Their defence therefore depended on their belief that Mrs Morgan had consented to the violent sexual acts. However, Mrs Morgan had made it quite clear that she was in fact not consenting and sustained significant physical injuries that later required hospital treatment.¹²³ Given the circumstances, the House of Lords was of the opinion that no jury would have considered the belief of the defendants as genuine and the three men (including Mr Morgan) were consequently charged with rape. As a result, the court established the current principle of intention for rape law in England and Wales whereby the accused's belief in consent must be *genuine* and

¹¹⁹ Rachel King (2011) 'Reflecting on sexual ethics and sexual assault prevention education', Interview with Dr Michael Flood, *Australian Institute of Family Studies*, no. 26, p. 14.

¹²⁰ Sexual Offences Act 'Rape' <http://www.legislation.gov.uk/ukpga/2003/42/section/1>

In many offences, particularly civil, the defendant may be convicted even though his act was not intentional. However, strict liability is often not applicable to more serious offences where *mens rea* is a requirement. The only exception to this rule relating to sexual offences is when the act involves a minor. See Richard Card (2014) 'Strict Liability', *Criminal Law*, 21st ed, (Oxford: Oxford University Press), pp. 128, 349.

¹²¹ Keith Burgess-Jackson (1996) 'Mens Rea', *Rape: A Philosophical Investigation*, (Dartmouth Publishing Company: Aldershot), p. 137.

¹²² Douglas N. Husak & George C. Thomas III (1992) 'Date Rape, Social Convention, and Reasonable Mistakes', *Law and Philosophy*, Vol. 11, No. 1-2, p. 98.

¹²³ E-Law Resources (2016) 'DDP V. Morgan [1976] AC 182 House of Lords' (Online) Available: <http://www.e-lawresources.co.uk/DDP-v-Morgan.php>, Accessed: 27/09/15.

honest.¹²⁴ While the 'reasonable person' test is entrusted to juries in a variety of criminal cases, the precedent set by the *DPP v Morgan* case was referred to by the press as the 'Rapist's Charter' as it raised the vexed question as to whether a genuinely mistaken belief in consent to sex is legitimate in absolving criminal liability for sexual offences.¹²⁵

Consider the following five examples as set out by Dini Rosenbaum (2008):

A *man* is found guilty of rape when:¹²⁶

- 1) He intends to have non-consensual intercourse – i.e. he desires and wants the sex to be non-consensual.
- 2) He knows they are having non-consensual intercourse – i.e. he would prefer if the sex was consensual but commits the act knowing it's non-consensual.
- 3) He consciously disregards the possibility that he is having non-consensual intercourse – i.e. he is unsure about whether the intercourse is consensual and decides to remain unsure.
- 4) He is unaware that he is having non-consensual intercourse, but it is *unreasonable* for him to be unaware that it is non-consensual, or to believe that it is consensual.
- 5) He is unaware that he is having non-consensual intercourse, but it is *reasonable* for him to believe that it is consensual.¹²⁷

In the first scenario, the man acts with purpose, in the second with knowledge, the third he acts recklessly, in the fourth he is negligent, and in the last scenario he is considered not to be at fault at all. However, this seems like the wrong approach to take. Regardless of our moral intuitions and evaluations of his behaviour, a man or woman was subjected to unwanted sexual intercourse in

¹²⁴ Crown Prosecution Service (2017) 'Rape and Sexual Offences: Chapter 3' (Online) Available: http://www.cps.gov.uk/legal/p_to_r/rape_and_sexual_offences/consent/, Accessed: 27/09/15.

¹²⁵ E.M Curley (1976) 'Excusing Rape', *Philosophy and Public Affairs*, Vol. 5, No. 4, p. 327.

¹²⁶ Although it is possible for a woman to rape a man, female-male and female-female rape continues to be classified as 'assault by penetration' rather than 'rape' under the law governing sexual offences in England and Wales.

¹²⁷ Dini Rosenbaum (2008) 'Strict Liability and Negligent Rape', *Cardozo Journal of Law and Gender*, Vol. 14, No. 1, pp. 732-735, (Online) Available: http://www.cardozolawandgender.com/uploads/2/7/7/6/2776881/14-3_roosenbaum.pdf, Accessed: 20/02/16.

all five scenarios. In only criminalising those whose actions are accompanied by a guilty intention, current rape law in the US and England and Wales places greater emphasis on punishing a person who is at fault for their conduct rather than ensuring that individuals are not subjected to unwanted sexual intercourse. However, as Mary Heath (2011) asserts, the law is a blunt instrument. While there needs to be a strict moral regime that rigorously defends everyone's rights to engage in or refuse sexual contact, the law cannot safeguard an individual's autonomy, it can only attempt to punish serious violations of it.¹²⁸ It is therefore important to note that the law surrounding sexual offences is not discriminately unjust in this respect. Despite the peculiar possibility of saying that a victim has been raped, but not by a rapist, a mistake of fact is often considered an adequate defence for most offences in criminal law.¹²⁹ At the same time, allowing an individual's false beliefs to exonerate criminal liability by implication regardless of what the victim said or did, or however violated he or she was, could further contribute to the extremely high acquittal and low prosecution rates of all rape cases. As reiterated by British feminist and academic Jane Ussher, "all the man has to say is 'I thought she really wanted it' and the law *may* be lenient".¹³⁰ Indeed, the most usual mistake defence in sexual offence cases is "but I thought she consented".¹³¹

I believe this poses a practical challenge worthy of consideration. If an individual is operating on beliefs that stem from accepted social conventions, is it fair to hold them criminally liable for their actions? As H.L.A Hart (1968) notes, the term *mens rea* is misleading in assuming that criminal laws are only violated with the presence of a guilty mind.¹³² For example, dominant constructions of male and female sexuality can be seen to have a profound influence in defining and shaping interpretations of consent. Michael Flood (2016) observes that we teach men to be rapists in all sorts of ways – "We teach men not to take a woman's no for an answer, to see women as being perpetually sexually available, to ignore women's signs of disinterest, and to push past women's

¹²⁸ Rachel King (2011) 'Reflecting on sexual ethics and sexual assault prevention education', Interview with Associate Professor Mary Heath, *Australian Institute of Family Studies*, no. p. 18.

¹²⁹ Marcia W. Baron (2001) "I Thought She Consented", in *Philosophical Issues*, no. 11, p. 1.

¹³⁰ Sara Hinchliffe (2000) 'Rape Law Reform in Britain', *Society*, Vol. 37, no. 4, p. 57.

¹³¹ Marcia W. Baron (2001) "I Thought She Consented", in *Philosophical Issues*, no. 11, pp. 1-4.

¹³² Robert Summers (1969) 'Book Review: Punishment and Responsibility by H.L.A Hart', *University of Toronto Law Journal*, Vol. 19, no. 4, p. 645.

resistance”.¹³³ This view is similarly expressed by Burgess-Jackson (1996) who highlights how an individual’s beliefs may lead them to have a *genuine* and *honest* belief that he or she is consenting to sex, even though it may be based on false premises:

He may believe, as a result of his sex-role socialisation that many, most, or all women put up “token” resistance to sexual intercourse when they really desire it... Women are not supposed to be sexual, he thinks. They are coy. They play games. He may, as a result, interpret the victim’s “No”, “Maybe”, or “I’m not sure” as an affirmation of consent.¹³⁴

This statement is empirically supported by Melanie Ann Beres (2014) whose qualitative study on casual sex found that many young men continue to rely on problematic indicators of consent, such as the absence of physical resistance, body language, and previous sexual activity. For example, male participants stated that consent is “the butt lift”,¹³⁵ “going home with someone” and “not saying no”.¹³⁶ There are no actual words in any of these statements that indicate a freely given agreement to have sexual intercourse. It is therefore easy to imagine scenarios where ‘reasonable’ adults are capable of committing a sexual offence without actually realising that he or she is doing any wrong.

The more interesting question is therefore not to decide whether defendants who have made an unreasonable mistake about consent should be liable for rape, but to understand how a mistake about consent *could* be reasonable.¹³⁷ Suppose that a man believes that a woman has given her consent to a sexual activity. What counts as a *good* reason to conclude that his belief is reasonable? The law as outlined in the SOA [2003] s 1 (2) does not require any specific steps to be taken:

¹³³ Michael Flood (2016) Interview [See Abstract: Document 2].

¹³⁴ Keith Burgess-Jackson (1996) ‘Mens Rea’, *Rape a Philosophical Investigation*, pp. 143-144.

¹³⁵ The “butt lift” refers to when a woman lifts her butt and allows for her partner to remove her underwear.

Melanie Ann Beres (2014) ‘Rethinking the concept of consent for anti-sexual violence activism and education’, *Feminism and Psychology*, Vol. 24, No. 3, p. 382.

¹³⁶ *Ibid*, pp. 382-383.

¹³⁷ Douglas N. Husak and George C. Thomas (2001) ‘Rape Without Rapists: Consent and Reasonable Mistake’, *Philosophical Issues*, Vol. 11, No. 1, pp. 86-117.

Whether a belief in consent is reasonable is to be determined having regard to all the circumstances, including any steps A (the defendant) has taken to ascertain whether B (the complainant) consents.¹³⁸

While one may fulfil the legal criteria of consent in agreeing by choice and having the relevant capacities and freedom to make that choice, the law fails to outline what principles of consent are legally sufficient. If consent is treated as a matter of what a reasonable person would do, then it is entirely possible for the absence of consent to exist without ever being overtly expressed in that person's behaviour.¹³⁹ One may object to this position by suggesting that consent needs to be adequately communicated if the other party is to have a fair opportunity to recognise it. However, as Archard (1998) highlights, sex is "an activity characterised by informality, spontaneity, and heightened senses".¹⁴⁰ Evidence from studies exploring the use of consent to sex suggests that consent is more frequently communicated non-verbally.¹⁴¹ From this conventional expression of consent, silence could be *reasonably* interpreted as an indication of consent.

Given that acts of men's violence against women exist on a continuum and often stem from what *most* reasonable people consider to be innocuous socio-cultural practices, the very possibility of having negligent or accidental perpetrators of rape poses a significant threat to the legitimacy of criminal liability - ignorance of fundamental criminal acts should be no excuse before the law.¹⁴² Indeed, major criminal offences, such as rape and sexual assault, should not require specialised education or theoretical insight. However, as evidenced by the inadequacy of the tea and consent campaign, it is clear that they do. This is significant as it demonstrates that while cultural conditions do not determine individual action, they can close off certain possibilities in limiting the evidence

¹³⁸ Richard Card (2014) 'Sexual Offences', *Criminal Law*, 21st Edition, (Oxford: Oxford University Press), p. 347.

¹³⁹ Brenda M. Baker (1999) 'Understanding Consent in Sexual Assault', *Rape: A Philosophical Investigation*, p. 62.

¹⁴⁰ David Archard (1998) *Sexual Consent*, p. 22

¹⁴¹ Melanie Ann Beres (2014) 'Rethinking the concept of consent', p. 375.

¹⁴² Jennifer Temkin 'Defining and Redefining Rape', *Rape and the Legal Process*

"A crime must be deliberate or reckless intent to do something that society brands as criminal. Only that justifies punishment. In civil legislation, there is clearly room for fault to be penalised if it is merely a mistake. We do that in relation to negligence generally in the civil courts, but not in the criminal courts."

available for agents to critically question their current sexual practices. For example, taking sufficient steps to ensure consent to sex is not an unreasonable or challenging task – to stop and think and to ask certain questions. At the same time, this type of communication is largely absent from mainstream representations of sex and is framed as being ‘unsexy’. We are quick to assume that the legalistic, contractual basis for engaging in sexual relations, at least with a new partner, is destructive of genuine intimacy. Although men may act in the clear violation of the law in failing to secure consent, they are not necessarily acting outside the dominant rules, norms and values of their society. While a communicative model of sexuality would undoubtedly result in a better ethical standard for everyone, the very legal construct of consent to sex fundamentally misdescribes how *most* people communicate a willingness to engage in sexual relations. Criminal law currently risks upholding and reinforcing these accepted (and highly problematic) socio-cultural conventions. However, until educational changes happen, the law has little recourse but to follow.¹⁴³

Part Three

The Moral Limits of Criminal Law

Generally speaking, laws are not self-activating and will always lag behind the public’s understanding. However, the law surrounding consent to sex is unreflective of society and in a sense, almost too progressive. As highlighted, consent to sex is rarely communicated verbally and made between parties who are equal in power and knowledge, therefore leaving room for coercion, deception and unfair advantages. It is therefore important to question whether consent is socially rich enough in providing justification for what is otherwise considered a lawful act. This point is clearly reflected by MacKinnon (1987), who questions whether consent is a meaningful concept considering the broader contextual factors that pervasively shape sexual relations between men and women. In light of these cultural conditions, the masquerade of an

¹⁴³ Douglas Husak and George Thomas (1992) ‘Date Rape, Social Convention and Reasonable Mistakes’, p. 126.

'objective' reasonable standard of consent appear utterly useless in educational campaigns used to promote the law surrounding sexual offences given that we collectively rely on deeply embedded societal, patriarchal and pornographic assumptions for what counts as a woman's consent to sex.

Despite this, it is unrealistic to expect laws and legal procedures governing sexual offences to consider social context and disadvantage in a meaningful way. If concern for the preconditions of women's meaningful choice in sexual relations is to be taken seriously, how then should criminal law identify and address sexual acts in the context of power? Are we to assume that some cases of 'consensual', but undesired acts of sex are rape too? Legally speaking, it is understandably difficult to appreciate why women faced with pressure to have unwanted sex wouldn't just say no. While it seems a gross oversimplification to say that all that distinguishes rape from sex is a lack of consent, the concept of consent has remained remarkably durable in British common law because it satisfies public policy concerns about not intervening too paternalistically in people's lives by providing a minimum standard for non-criminal sex. Indeed, the law must only seek to define behaviour so fundamentally inappropriate that it should rightfully be called criminal. Morally speaking, there are a myriad of coercive sexual acts that lie somewhere in between rape and sex but fall outside the purview of state intervention. However, in seeking to punish only those who are exceptionally deviant, the law cannot be expected to decisively clarify these ambiguities and enforce a positive moral ideal surrounding an individual's sexual relations.

Culturally redefining sex

It seems that we live in a world obsessed by sex and sexuality. Following the sexual liberation during the 1960s and 1970s,¹⁴⁴ sex and sexual choice has become far more permissible than it was fifty years ago. In many ways, we have more liberalised sexual attitudes; a greater acceptance of non-marital and extra-marital sexual relations, casual or experimental sex, acceptance of same-sex

¹⁴⁴ R.W Connell (1997) 'Sexual Revolution', in Lynne Segal's *New Sexual Agendas*, (New York: New York University Press), p. 60.

relationships, masturbation and pornography use.¹⁴⁵ However, the idea of a repressive power infringing on sexuality is far from irrelevant today. It still seems that we are very conflicted as a society and as individuals in how to talk about sex. It tends to evoke a visceral reaction of extreme awkwardness. This is clearly reflected by the fact that sex education in schools remains a contentious issue. While the government maintains that “all young people should have high quality teaching in this area”,¹⁴⁶ teacher embarrassment and a lack of knowledge are often to blame in failing to extend lessons beyond reproductive biology. While it is all very well and good for young people to know where their reproductive organs are located, such education fails to give them the much needed skills surrounding how to have positive, respectful and healthy relationships. There is a huge difference between knowing that you *have* a choice to consent to sex and knowing *how* to exercise this choice within real life circumstances.

While the law cannot enforce a positive moral ideal surrounding an individual’s sexual relations, we can as a society through institutions concerned with the maintenance of moral standards (such as the family, education system, religious organisations, and peer groups), promote them. In order for consent to become a meaningful concept, I believe this needs to start with changing the social conditions surrounding the various ways in which we culturally understand, represent and talk about sex. There is a cultural tendency to equate what is legal with the good or harmless.¹⁴⁷ The orthodox view that sex is only wrong when it is accompanied by the absence of consent is relatively unquestioned. Given that it is held that rape is bad *because* it is non-consensual – it then seems to follow that consensual sex must be good or have a neutral, merely permissible value by virtue of simply being consensual.¹⁴⁸ However, as I have demonstrated with reference to MacKinnon’s, Cahill’s and Gavey’s works, this is a simplistic view. While it may be appropriate to focus on consent in

¹⁴⁵ Michael Flood (2016) Fostering boys’ and men’s resistance to pornography. Keynote address, Pornography and Harms to Children and Young People Symposium, University of New South Wales, Sydney, February 9.

¹⁴⁶ BBC (2010) ‘Sex Education Could Be Better’, BBC, 23rd July, 2010, (Online) Available: <http://www.bbc.co.uk/news/education-10727656>, Accessed: 09/10/16.

¹⁴⁷ Robin West (1995) ‘The Harms of Consensual Sex’, *The American Philosophical Association Newsletters*, Vol. 92, No. 1, pp. 52-55.

¹⁴⁸ *Ibid*, p. 55.

criminal law, where the basic project is to satisfy a minimum requirement for non-criminal sex, consent is not always a meaningful marker that can be used to clearly distinguish between rape and sex, and therefore cannot be relied upon as a good proxy for sexual wellbeing. How then, can we have sexual intimacy without sexual coercion, or sex that is at the very least not morally wrong to varying degrees?

I propose that it is unhelpful to continue assuming that sexual intercourse is normally equal and separate from social norms, practices and institutions. The act of rape is a part of a complex system in which women's submission, humiliation, violation and injury defines sexual excitement. A recent analysis of top-renting pornography titles in the US found high levels of violence in pornographic content. Of the scenes analysed, 88.2% contained physical aggression against females through slapping, gagging, spanking, hair-pulling and choking. While only 10% of scenes contained positive behaviour such as kissing, laughing and embracing.¹⁴⁹ This is significant as cultural understandings of sex become dichotomised into an act whereby the woman is rendered less powerful and less human in comparison to her male counterpart whose status becomes elevated. As reiterated by Germaine Greer (1970) in her classic text *The Female Eunuch*, "sex must be rescued from the traffic between powerful and powerless and the masterful and mastered". This does not mean to say that men consciously (although presumably some do) disrespect or devalue women in acts of sexual penetration. Rather, it is to highlight the very important fact that sex can imply something about one's worth.

It is therefore extremely difficult to promote an objective legal definition of consent against the backdrop of a deeply unequal society that does not actively encourage sexual negotiation or mutuality in choice. As Brownmiller (1975) asserts, "even the most perfect rape laws in the land will not be enough to stop rape".¹⁵⁰ In other words, the extent to which the law alone can influence people's values, beliefs, attitudes and behaviours to protect women from men's

¹⁴⁹ A.J Bridges et al. (2010) 'Aggression and Sexual Behaviour in Best-Selling Pornography Videos: A Content Analysis Update', *Violence Against Women*, Vol. 16, No. 10, pp. 1065-1085.

¹⁵⁰ Susan Brownmiller (1975) *Against Our Will*, p. 400.

violence and successfully prosecute cases of sexual violations will remain extremely limited unless the features of women's continuing inequality are addressed first. Justice cannot be achieved by a set of rules without a simultaneous shift in public opinion. In order to find conditions under which sexual desire can work ethically, we need to address the conditions that promote male sexual entitlement and the states of mind and social structures that overwhelmingly prompt, suggest or compel women to consent to sex they do not truly want or desire.

Given the importance of public opinion, how we collectively think about rape matters. It determines how we talk about rape, how the law defines rape, how the media writes about rape, and ultimately, it determines what we do as a society to combat rape. Chapter 1 has established that the law of rape, and how effective it is, is largely dependent upon which values are brought to bear upon it.¹⁵¹ Chapter 2 argues that if we wish to change the way we think about rape, we need to re-evaluate *why* we think rape is wrong.

¹⁵¹ Keith Burgess-Jackson (1996) 'Conclusion', *Rape: A Philosophical Investigation*, p. 209.

The Wrong of Rape

“One of the most important aspects of rape as it occurs in our society is the way in which it is a moral injury to all women, not merely to the woman who experiences it, insofar as it is part of a pattern of response of many men towards many women that aims to establish their mastery qua male over a woman qua female.”

(Jean Hampton, 2001)¹⁵²

Why is rape wrong? Remarkably, few contemporary philosophers have proposed a coherent answer to this pertinent question. As noted earlier, this may appear like an unusual question to ask given that almost everyone intuitively believes that rape is palpably wrong. It is the very unadorned and obvious belief that rape is wrong that has left many philosophers to accept rape as a settled paradigm of wrongdoing, with little agreement as to *why*.¹⁵³ However, I think this is an interesting question deserving of careful attention. In reflecting on rape as an act of institutional wrongdoing, I will argue that it matters *why* we believe that rape is wrong. In highlighting how misguided beliefs surrounding the wrong of rape have allowed for the act of rape to flourish, the moral certainty ascribed to the act is insufficient to understand its wrongfulness. Arguably, the sheer prevalence of rape in society alongside widespread moral condemnation is a clear paradox.¹⁵⁴ In part one, I then critically assess how some philosophers have attempted to articulate the wrong of rape in terms of non-consent, the unjustified use of violence, the sexual nature of the crime, and in Kantian terms, the sheer use of a person as a means to an end. While some of these propositions plausibly count as wrong-making characteristics of rape, they are not what *distinguishes* rape as a crime. Indeed, philosophers' efforts to articulate a unique feature of rape to explain its universal wrongness have been inadequate. Instead, I will argue that it is the *combination* of its wrong-making features, alongside the context in which it is so prevalent in

¹⁵² Jean Hampton (2001) 'Defining Wrong and Defining Rape', in Keith Burgess-Jackson (eds.), *A Most Detestable Crime: New Philosophical Essays on Rape*, (New York: Oxford University Press), p. 135.

¹⁵³ Don Berkich (2009) 'A Heinous Act', *Philosophical Papers*, Vol. 38, No. 3, p. 381.

¹⁵⁴ The same could be said for say murder or theft. However, there is never a *justified* reason for rape.

our society, which makes rape such a grave moral wrong. While I uphold that it is the combination, arguably, the most morally relevant feature to the wrongness of rape, is the fact that rape is overwhelmingly committed by men against women. In the pursuit of a unique wrong-making feature of rape, philosophers have also tended to focus on *individualistic* accounts of its wrongness. I conclude that this has acted as an impediment to understanding the systemic nature of rape's wrongfulness which has impacted the measures taken to address rape. Subsequently, rape has not been addressed in society as an institutional failing and remains a structural injustice and violation to *all* women.

Moral certainty on the wrongness of rape

Unlike topics such as abortion, euthanasia, and animal rights, we exhibit an uncontroversial and collective moral certainty that the act of rape is unequivocally wrong. However, mere moral certainty does not make rape immune to justification and critical reflection. Indeed, our moral evaluations of rape, and thus the reason for its wrongness, have changed significantly over time, from conceptualising the wrong of rape as an affront to male privilege and property, to reconsidering the wrongness of rape to be in its violation of individual autonomy. There is a tendency to believe that we have somehow evolved to have superior moral views simply by virtue of living in a later time period. However, the different characterisations of rape clearly reflect the dominant socio-cultural ideologies surrounding the status of women in society and underlying assumptions about male and female sexuality at the time. For example, the ethical wrongs of rape were historically defined in relation to the belief that women were the valuable sexual property of men.¹⁵⁵ This is significant, as it problematises our assumed sense of moral progression by demonstrating how our judgements and justifications for the wrongness of rape are socially, culturally and historically situated.

Intuitively, socio-legal understandings surrounding the wrong of rape have

¹⁵⁵ Patricia Smith (1999) 'Social Revolution and the Persistence of Rape', *A Most Detestable Crime: New Philosophical Essays on Rape*, (New York: Oxford University Press), pp. 32-33.

profound practical implications for thinking about rape as a social problem and developing appropriate strategies to combat its prevalence. In historically defining the wrong of rape as a crime against male property, the legal severity of the rape in question was largely dependent on the *type* of woman who had been victimised, most notably regarding the rape of virgins as the most serious given its assumed depreciation of the woman's value.¹⁵⁶ Consequently, this understanding created an institutional blindness which made the rapes of women by their husbands entirely permissible. Today, conceptualising the wrongness of rape based on the violation of individual autonomy alone appears sufficient. However, this conception is incomplete because it obscures the fact that rape disproportionately affects women and ignores how acts of men's violence against women belong to broader patriarchal processes. In doing so, the legal system and current social interventions continue to emphasise the individualised nature of rape, rather than its collective implications. This is extremely problematic as our exclusive fixation on rape myths and the individual victims or perpetrators of this crime function as an insidious distraction, meaning that we are collectively less likely to critically reflect on the systemic causes and consequences of men's violence against women. A critical evaluation of why rape is wrong is therefore significant because it demonstrates the very obvious point that *why* we think rape is wrong matters. In doing so, this assessment provides important directions for future intervention and reform.

Part One

The wrong-making characteristics of rape

In the popular American television show *Law and Order*, the introduction starts with the line "in the Criminal Justice System, sexually based offences are considered especially heinous". This type of statement is reflective of societal beliefs, but what is it precisely that makes the act of rape particularly egregious in comparison to other crimes? Given that rape is defined as non-consensual sex, presumably the wrongness of rape must be explicable in terms of its *non-*

¹⁵⁶ Jean Hampton (1999) 'Defining Wrong and Defining Rape', *A Most Detestable Crime: New Philosophical Essays on Rape*, (New York: Oxford University Press), p. 118.

consensuality.¹⁵⁷ Traditionally, scholars who have sought to understand the wrongness of rape have based their analysis on the explicit assumption that rape is wrong because it is a violation of *individual* rights based on a non-consensual interaction. In other words, rape is a serious moral wrong because it bypasses the consent of the victim, therefore violating their right to bodily autonomy, integrity and self-determination.¹⁵⁸ However, this explanation is far too sweeping. While it is of course plausible to think of actions without an individual's consent as seriously wrongful, I uphold the view that it is not the fundamental wrong-making feature of rape. As John Gardner (2007) identifies, consent fails to sufficiently capture precisely what the wrongness of rape consists of given that the same could be said for virtually any other crime against the person.¹⁵⁹ For example, theft, assault, kidnapping and murder are all equally defined by an absence of consent and violation of individual autonomy. Where does the 'worseness' in rape then lie?

In October 1977, French philosopher Michel Foucault posed the highly provocative question "Why isn't rape the same as a punch in the face?" at a roundtable discussion in Paris. In stating that "there is no difference, in principle, between sticking one's fist into someone's face or one's penis into their sex", Foucault called for the decriminalisation of rape as a *sexual* crime.¹⁶⁰ This view is similarly supported by Laurie Calhoun (1997) who states that "the fact that rape involves sex is irrelevant to its wrongness."¹⁶¹ However, the suggestion that rape belongs strictly to the realm of physical violence appears somewhat inappropriate. Given the fact that rape falls under the category of the *Sexual Offences Act*, it is generally assumed that rape is *some kind* of sexual intercourse. Indeed, on the surface, the two acts could look virtually indistinguishable except the presence of consent makes one legally permissible and the other to warrant legal intervention with severe penalties. Intuitively, rape

¹⁵⁷ David Archard (2007) 'The Wrong of Rape', *The Philosophical Quarterly*, Vol. 57, No. 228, p. 382.

¹⁵⁸ *Ibid*, p. 379.

¹⁵⁹ John Gardner (2007) 'The Wrongness of Rape', in *Offences and Defences: Selected Essays in the Philosophy of Criminal Law*, (Oxford), p. 3

¹⁶⁰ Michel Foucault (1988) 'Confinement, Psychiatry, Prison', *Philosophy and Culture: Interviews and Other Writings 1977-1984*, (Routledge: London), p. 200. (Online) Available: http://monoskop.org/images/9/96/Foucault_Michel_Politics_Philosophy_Culture_Interviews_and_Other_Writings_1977_1984.pdf, Accessed: 25/02/16.

¹⁶¹ Laurie Calhoun (1997) 'On Rape: A Crime Against Humanity', *Journal of Social Philosophy*, Vol. 28, No. 1, (Spring 1997), p. 109.

is seriously morally wrong in ways simple assault is not. As Ann Cahill (2001) asserts "... few women would agree that being raped is essentially equivalent to being hit in the face or otherwise physically assaulted."¹⁶² How then, can rape be considered as an act of violence?

In answering this question, a popular analogy comes to mind: 'Rape is about violence, not sex. If a person hits you over the head with a spade, you wouldn't call it gardening'. In other words, just because the 'tools' are the same, rape should not be viewed as a sexual activity on the basis of the fact that it targets the victim's sexual organs. Generally speaking, this statement reflects the long-standing feminist tradition to broaden the divide between sex and rape. Susan Brownmiller (1975) for example, is well-known for her statement that rape is about violence, not sex. Indeed, this view has some merits given that classifying rape as a sexual offence has had a number of negative legal and social consequences. For example, it has perpetuated victim-blaming attitudes by supporting claims that men rape because they simply cannot control their overwhelming sexual urges or that women secretly desired it. Moreover, classifying rape as a sexual offence may contribute to the shocking, but still prevalent tendency to see a complainant's sexual history as relevant to the issue of consent.

Despite these justified concerns, such an abstraction seems rather curious given that by virtue, the very act of rape appears inherently sexual. Unlike with gardening, in which hitting someone over the head with a shovel would never constitute part of the process, penile penetration is a common feature in both consensual sex and rape. This analogy further denies how the sexed body is imbued with social meaning which adds to the significance of rape compared to other acts of violence, such as assault with a shovel. Winifred Woodhull (1988) articulates this point clearly: "If we are to seriously to come to terms with rape, we must explain how the vagina comes to be coded—and experienced—as a place of emptiness and vulnerability, the penis as a weapon, and intercourse as

¹⁶² Ann Cahill (2001) 'Introduction: The Problem of Rape', *Rethinking Rape*, p. 3.

a violation”.¹⁶³ One may then argue that rape is not like a punch in the face precisely because sexual organs aren’t like a nose, an arm or a leg. In many ways, it is easier to think of rape as a violation if one does not think of rape as a type of sex. Indeed, conceptualising rape as an act of violence would make for a relatively straightforward offence. However, if the wrongness of rape is defined in relation to the unjustified use of violence or force, this reclassification could hold profound consequences in judging how severely rape should be punished. If rape is merely considered an act of physical aggression, like a punch in the face, is a minimum prison sentence of at least five years still justified? Moreover, statistics indicate that most rapes do not involve the actual use of physical violence. Identifiable physical signs of trauma such as a blood, bruises, genital injury and torn clothing are all *atypical features* of sexual violence. Practically, such a reclassification could potentially increase the dependence on evidence of a physical struggle in judging the severity and sincerity of alleged rapes. Conceptually, a description of rape as violence fails to capture what is distinctly unique and therefore specifically morally egregious about the crime. As MacKinnon (1987) observes, “So long as we say that [rape, sexual harassment, and pornography] are abuses of violence, not sex, we fail to criticise what has been made of sex, what has been done to us through sex”.¹⁶⁴ To desexualise the act of rape as a form of violence and “nothing but”,¹⁶⁵ is to ignore how the act itself is inscribed with a host of bodily and sexually specific meanings – all of which contribute to its wrongness.

Penile-penetrative sex: a *prima facie* wrong?

In comparing rape from other acts of violence, it is clear that non-consent alone is not the determining wrong-making feature of rape. Perhaps then, it is the sexual nature of the act that adds a morally relevant dimension to rape. Legally, what makes rape particularly egregious is not just the fact that it is a non-consensual act, but that it is an act of non-consensual sex; more specifically,

¹⁶³ Winifred Woodhull (1988) ‘Sexuality, Power and the Question of Rape’, in SL Bartley, Irene Diamond and Lee Quinby’s (ed.) *Feminism and Foucault: Reflections on Resistance* (Boston: Northeastern University Press), p. 171.

¹⁶⁴ Catharine A. MacKinnon (1987) ‘Sex and Violence: A Perspective’, *Feminism Unmodified: Discourses on Life and Law*, (Cambridge: Harvard University Press), pp. 86-87.

¹⁶⁵ Michael Foucault (1988) ‘Confinement, Psychiatry, Prison’, *Philosophy and culture: Interviews and Other Writings 1977-1984*, p. 200.

non-consensual penile-penetrative sex. As outlined in Chapter 1, the *Sexual Offences Act* (2003) created a hierarchy of sexual offences by drawing a divide between the seriousness of assault by penetration and rape (both of which violate the same orifices) based on the instrument used, concluding that the act of rape is deserving of a higher prison sentence because unlike an object, tongue or fingers, penile penetration carries the risks of disease and pregnancy.¹⁶⁶ However, consensual penile-penetrative sex can also *unknowingly* impose these harms.¹⁶⁷ Therefore, if it is to be held that rape is bad *because* it is non-consensual sex – it must follow that consent adds a positive moral dimension to the act.¹⁶⁸ What relative value does consensual penile-penetrative sex then have that makes non-consensual penile-penetrative sex such a grave moral wrong?

In understanding the wrong of rape in these terms, one must first understand what, if anything, is valuable about sexual activity. In mapping the moral landscape of sexual penetration, Jonathan Herring and Michelle Madame Dempsey (2007) claim that sex constitutes a *prima facie* wrong.¹⁶⁹ In other words, when a man penetrates the vagina, anus or mouth of a woman with his penis, he ought to have a good reason to do so. The claim that sexual penetration itself calls for justification, as opposed to sexual penetration without consent, will undoubtedly strike many as counterintuitive, or at least have Freud rolling over in his grave. Indeed, the orthodox view that sex is only wrong when it is accompanied by the absence of consent is relatively unquestioned. However, it is important to note that Herring and Dempsey's claim is not "any form of legal moralism or prudish attitudes towards sexual penetration."¹⁷⁰ Rather, the *prima facie* wrongness of sex can be substantiated in the use of force, risks of harm and negative social meaning of the conduct:

¹⁶⁶ Parliament UK (2003) 'Memorandum submitted by JUSTICE', Appendix 18, 10th July 2003, (Online) Available: <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmhaff/639/639ap19.htm#note49>, Accessed: 19/04/16.

¹⁶⁷ While one may consent to have sex, they do not always do so with full knowledge of the other person's sexual health and risk of unwanted pregnancy can still be present despite use of contraception (unless both/all parties are infertile).

¹⁶⁸ Robin West (1995) 'The Harms of Consensual Sex', p. 55.

¹⁶⁹ Jonathan Herring and Michelle Madame Dempsey (2007) 'Why Sexual Penetration Requires Justification', *Oxford Journal of Legal Studies*, Vol. 27, No. 3, pp. 467-491.

¹⁷⁰ *Ibid*, p. 491.

i. Physiology/force

Firstly, Herring and Dempsey assert that a man who penetrates the vagina, anus or mouth of a woman with his penis commits a prima facie wrong in virtue of using physical force. One reason why penile penetration of the vagina or anus is properly understood to require justification is due to the physiological fact that force is required to achieve such penetration. Due to the physical structure of sphincteric muscles, a penis cannot simply fall into the vagina, mouth or anus. While it is of course plausible to conceive a circumstance where sexual intercourse is accomplished without the use of force by a male (e.g. a man who may be completely immobile), generally speaking, a man engages in pushing movements to achieve initial penetration or thrusting movements during intercourse, to which constitutes the use of force.

ii. Risks of harm

Secondly, Herring and Dempsey claim that the non-trivial risks of harm from sexual penetration constitute a prima facie wrong. There are many things we do in relation to other people that have the potential to risk harm. For example, when walking in public we might risk bumping into someone, setting back their interests in causing pain, or making them late to an important meeting.¹⁷¹ However, in order for conduct to be properly classified as a prima facie wrong due to the risk of harm it poses, Herring and Dempsey assert that it is a threshold concept that demands a combined degree of risk that is sufficiently serious in nature. For Herring and Dempsey, the seriousness of sexual penetration is captured in its capacity to involve causing harm in the risk of unwanted pregnancy, sexually transmitted diseases, vaginal infections and a degree of abrasion, slight chaffing or even the tearing of vaginal tissue.

iii. Social Meaning

Lastly, Herring and Dempsey conclude that the prima facie wrongfulness of sexual penetration can be found in the negative social meaning of the conduct in relation to dominant ideologies in society. Most notably, the perceived value

¹⁷¹ Jonathan Herring and Michelle Madame Dempsey (2007) 'Why Sexual Penetration Requires Justification', p. 476.

and status of women. This point does not mean to say that all men express something negative about women when they sexually penetrate them (although presumably some do), it is to highlight how given the current institutional conditions, the act of sexual penetration has the capacity to render women “less powerful and less human whilst the man is rendered more powerful and more human.”¹⁷² For example, the devaluing and disrespecting of women is a consistent theme in all of our representations of heterosexual sex and male and female sexuality, through films, advertising, literature, television, pornography and a general level of social discourse on the topic. These socio-cultural messages are significant as they make the act of sexual penetration normatively meaningful.¹⁷³

If one accepts Herring and Dempsey’s classification of sexual penetration as a *prima facie* wrong, it would then seem that at a baseline level, the wrong of non-consensual penile-penetrative sex (rape) is exacerbated by the *prima facie* wrongness of sexual penetration more generally. The force involved, risk of harm and the social meaning of sex appears intuitively convincing, as it demonstrates why consent matters to rape in the first place. Indeed, these are not features shared by other crimes against the person. However, while the serious risks of harm may constitute the *prima facie* wrongfulness of sex, the risk of physical and/or psychological harm cannot make a rape a wrong. In other words, even the inherent sexual nature of rape itself is unable to wholly articulate its wrongfulness. For example, even if a rape existed by itself, in absolute isolation where the individual did not experience feelings of violation, hurt or distress, we would still intuitively believe that she has been seriously wronged. While a wrongful action has something to do with harm, the connection is not direct or straightforward because harm is not necessary for a wrong to exist.

A harmless rape?

¹⁷² Jonathan Herring and Michelle Madame Dempsey (2007) ‘Why Sexual Penetration Requires Justification’, p. 485.

¹⁷³ I will further elaborate on the contextual factors Herring and Dempsey identify that can contribute to the wrongness of sexual penetration (and in turn, rape) later in this chapter.

In an attempt to demonstrate that the existence of harms are not necessary to the wrongness of rape, and in turn, delineate the precise wrong of rape, John Gardner and Stephen Shute (1998) developed a 'pure case' of rape. Consider the following:

A victim may be forever oblivious to the fact that she was raped, if, say, she was drugged or drunk to the point of unconsciousness when the rape was committed, and the rapist wore a condom. [...] Then we have a victim of rape whose life is not changed for the worse, or at all, by the rape. [...] She has no feelings about the incident, since she knows nothing of it. Indeed, the story has no prospective dimension for the victim, except possibly a hangover in the morning; otherwise the victim's life goes on exactly as before. [...] (Let's add, for complete insulation, that the rapist, who told no one of what he did, is run over by a bus as he leaves the house, and that this would have been no less likely to happen to him even if he had not perpetrated the rape, since that didn't either delay or precipitate his leaving. So the rape doesn't even make a difference to his prospects.)¹⁷⁴

It is therefore plausible that under certain circumstances the act of rape does not directly harm a victim (or anyone else). Some commentators have condemned the idea of a 'harmless rape' as being inconceivable.¹⁷⁵ Even Gardner himself notes that using an unlikely scenario may make the pure rape case "philosophically hazardous to reply upon."¹⁷⁶ However, while a harmless rape may be atypical, it is of course, entirely possible. For example, in April 2015, British nurse Andrew Hutchinson was jailed for eighteen years following the rape of a woman under general anaesthetic while under his care in hospital. The victim was unaware that she had been raped until the police arrived at her home and showed her images of the attack recorded on CCTV from February 2012.¹⁷⁷ Similarly to the pure case, the victim was oblivious to the fact that she

¹⁷⁴ John Gardner (2007) 'The Wrongness of Rape, *Offences and Defences* (Oxford: Oxford University Press), p. 5.

¹⁷⁵ Alessandro Spina (2010) 'Harmless Rapes? A Problem for the Harm Principle', *Diritto and Questioni Pubbliche*, p. 489-499.

¹⁷⁶ John Gardner (2007) 'The Wrongness of Rape', p. 6.

¹⁷⁷ BBC (2015) 'Nurse Andrew Hutchinson jailed for attacks on patients', *BBC*, 27th April 2015, (Online) Available: <http://www.bbc.co.uk/news/uk-england-32486188>, Accessed: 05/03/16.

had been raped until she had been alerted by the police. The victim's lack of knowledge about her experience meant that she did not suffer any psychological trauma and no known physical harm directly following the incident.

In more typical cases, rape is, of course, seriously harmful. As Gardner identifies, victims may suffer “unspeakable harms” in sustaining severe physical injuries, being deprived of a sense of security, suffering psychological trauma, the possibility of pregnancy and/or sexually transmitted diseases and so on.¹⁷⁸ However, the likelihood of these harms cannot be said to *make* rape a wrong given that they are largely dependent on a victim's individual experience and her interpretation or evaluation of what has happened to her. In taking away the “distracting epiphenomena”,¹⁷⁹ the pure case of rape highlights that while the harms of rape may exacerbate how people perceive the wrongness of rape, the wrong of rape remains even in the absence of such harms. In Kantian terms, rape is a *categorical wrong* which means that the ‘pure case’ of rape is no less wrong than rapes that involve serious bodily and psychological trauma. Consequently, the wrong of rape is not contingent upon harm.

In establishing how the wrong of rape is independent from physical harms and evaluation-dependent reactions, Gardner's analysis appears promising. Indeed, eschewing the temptation to conflate the wrong and harm of rape has significant normative implications. As outlined in Chapter 1, placing the harms of rape on a linear scale manifests in prejudicial characteristics of what a ‘real rape’ is. This is extremely problematic as it establishes a ‘hierarchy of suffering’ which serves to define some rapes as less harmful, or not harmful at all if they do not include certain characteristics that are deemed to constitute a ‘real rape’. Understanding rape as a categorical wrong therefore reinforces the fact that rape is unacceptable in any circumstances and helps to dispel claims used to exonerate an accused rapist on the basis that the alleged victim did not suffer greatly, or was somehow responsible for what happened to them.

¹⁷⁸ John Gardner (2007) ‘The Wrongness of Rape’, p. 6.

¹⁷⁹ *Ibid.*

Despite the benefits of Gardner's analysis, he dubiously concludes that the basic wrong of rape lies in how the "rapist objectifies his victim by treating her as a mere repository of use-value."¹⁸⁰ Gardner is not alone in his attempt to invoke a Kantian argument in order to make the wrong of rape explicable. Calhoun (1997) for example, states that "rape is a crime of invasion in which an aggressor appropriates another human being at his personal possession and acts completely without regard to the fact that she is an intelligent, sentient human being with rights to self-determination and to live in peace and security."¹⁸¹ Ruth Herschberger (1970) believes that because the pleasure is so one sided rape is really a form of "intravaginal masturbation" where the woman is merely the object that contains the means to sensory simulation.¹⁸² Similarly, during Foucault's discussion on rape in Paris, one of the participants contributes by stating that "rape is non-orgasmic. It's a sort of rapid masturbation in someone else's body."¹⁸³ A merit in Gardner's line of inquiry is that it is so broad that it appears to hold true for all cases of rape whether or not they are accompanied by further affronts. However, the vagueness of this proposition is also where its weakness lies. Gardner claims that the most fundamental wrong of rape, which differentiates it from other assaults, is the *sheer use* of the person raped.¹⁸⁴ However, the sheer use of a person as a means to an end fails to capture what is unique and distinctive about the wrongness of rape. The sheer use proposition could similarly hold true for the wrong of torture, where the physical body of a person is used as a mere tool to extract information or fulfil other aims of the torturer. Both Herschberger and the panellist in Foucault's discussion on rape allude to the idea that the appropriation of the victim's body is a means to a *sexual* end. However, this would then narrow the wrong of rape to the sexual motivations of the perpetrator, therefore failing to account for how rape is used strategically in war or in cases of domestic violence where husbands might deny what they do is 'rape'.

¹⁸⁰ John Gardner (2007) 'The Wrongness of Rape', p. 15.

¹⁸¹ Laurie Calhoun (1997) 'On Rape: A Crime Against Humanity', p. 109.

¹⁸² Ruth Herschberger (1970) in Carol Smart (1977) *Women, Crime and Criminology: A Feminist Critique*, (New York: Routledge), p. 97.

¹⁸³ Michel Foucault (1988) 'Confinement, Psychiatry, Prison', *Philosophy and Culture: Interviews and Other Writings 1977-1984*, p. 202 .

¹⁸⁴ John Gardner (2007) 'The Wrongness of Rape', p. 16.

Not a wrong, not a harm, but a *moral violation* to all women

So far, all of the accounts identifying the wrong-making characteristics of rape fail to succeed in detecting one feature that is unique to its wrongness. Conceptually, gender-neutral explanations based on non-consent, unjustified use of violence, risk of harm and objectification all miss the mark in distinguishing precisely what differentiates the act of rape from other crimes against the person. It is helpful to borrow Wittgenstein's analogy of a rope to articulate the wrongfulness of rape. Like fibers in a rope, the previously discussed philosophical accounts can be considered valuable but not strong enough to function independently. In other words, the philosophical accounts offer only a partial explanation of the wrongfulness of rape. However, when considered in combination, the philosophical account of the wrongfulness of rape, like combined fibers, is strengthened. To extend the analogy further, the context in which rape occurs can be considered the bond that binds the rope which facilitates the individual fibers to strengthen.¹⁸⁵ In other words, traditional moral categories restrict us from considering the overlap and the overarching structure that contributes to the wrongfulness of rape. On an individual level, rape is an invasion of the body that treats the victim as *inferior*. In an institutionalised sense, the experience and prevalence of rape is located within a power structure that differentiates and disadvantages women, making rape a performative act of oppression that not only wrongs individual victims of rape, but also women as a collective.

Although the involuntary invasion of one's body and the sexual nature of the crime are particularly egregious wrong-making characteristics, arguably, the most morally relevant feature that makes rape unique is that it is overwhelmingly a crime committed by men against women.¹⁸⁶ Indeed, rape, unlike a punch in the face, is a specific offence that is primarily perpetrated against women, making the female sex and/or perceived female gender identity the primary targets of perpetration. It is important to highlight that classifying

¹⁸⁵ I am grateful to Nigel Pleasants for considering this analogy to demonstrate how philosophical attempts to identify a single explanation fundamental to the uniqueness of rape are misguided. Instead, it is the combination of a wide variety of wrong-making characteristics that make rape such a grave moral wrong.

¹⁸⁶ Burgess Jackson (2000) 'A Crime against Women: Calhoun on the Wrongness of Rape', *Journal of Social Philosophy*, Vol. 31, No. 3, Fall 2000, p. 287.

gender as a key feature of rape does not mean to imply that men may not also suffer from the fear and prevalence of rape. Rather, it is to highlight the simple fact that men and women are unequally situated with regard to their experience of rape. Both Calhoun (1997) and Berkich (2009) respectively view this social fact as an incidental, rather than as an essential feature of rape. However, the statement that the sex-linked pattern is neither fundamental nor essential to the moral wrongness of rape is puzzling because it makes rape incomprehensible.¹⁸⁷ Of course, one may hypothesise what the wrong-making characteristics of rape *could* be in alternative realities. However, in viewing the normative fact that rape is predominately committed by men against women as a mere ontological accident, this proposition holds no value in answering what the essential features of rape are today, in our world, as we know and experience it in society.

In declaring that rape is a crime against human beings, not women,¹⁸⁸ both Calhoun and Berkich mistakenly ignore two of the most fundamental aspects of rape as it exists today. Namely, its wider relationship to institutional rules and the historical and continued oppression of women – both of which certainly contribute to its wrongness. Throughout history, rape has primarily been a crime *against women*. Burgess-Jackson (2000) asserts that any plausible theory which seeks to understand the nature and wrongness of rape must account for this very fact, as to ignore it is to “distort the act beyond recognition”.¹⁸⁹ In 1993, the UN General Assembly recognised that:

Violence against women is a manifestation of historically unequal power relations between men and women, which have led to the domination over and discrimination against women and to the full advancement of women, and that violence against women is one of the crucial social

¹⁸⁷ Keith Burgess-Jackson (2000) ‘A Crime against Women: Calhoun on the Wrongness of Rape’, p. 287.

¹⁸⁸ Laurie Calhoun (1997) ‘On Rape: A Crime Against Humanity’, p. 109.

¹⁸⁹ Keith Burgess-Jackson (2000), ‘A Crime against Women: Calhoun on the Wrongness of Rape’, p. 287.

mechanisms by which women are forced into a subordinate position compared with men.¹⁹⁰

A substantial account detailing the wrongness of rape must account for how rape is a violation to not only individual victim's autonomy and bodily integrity, but also grasp the systemic social role of rape in a patriarchal political structure. It is therefore very important that we, both socially and philosophically, respond to wrongdoing in a way that affirms this fact.

Part one has critically assessed how some philosophers have attempted to articulate the wrong of rape. While I agree that some of these propositions plausibly count as wrong-making characteristics of rape, I maintain that they are insufficient as they obscure what is morally distinctive about rape, namely, its systemic character. In evaluating rape in individualistic terms, one denies the bond between the fibre and the rope. This is not to say that gendered nature of the crime is a central wrong-making characteristic of rape. Rather, it is to emphasise that meaningful explanations must account for how the act of rape is implicated within a larger system of domination and oppression as a crime predominately committed by men against women. In looking at how we might seek to properly account for the systemic character of rape, Part two will now outline how rape came to be labelled as a crime against humanity and discuss the applicability of this definition to rape in everyday contexts.

Part Two

Rape: *A crime against humanity*

To be able to respond appropriately to the wrongs suffered by a collective, we must first give the correct name to these wrongs. Following the combined atrocities in Bosnia and Rwanda during the 1990s, the systemic character of rape was acknowledged in international law and human rights discourse as a

¹⁹⁰ United Nations (2017) 'Declaration on the Elimination of Violence against Women', Proclaimed by the General Assembly Resolution 48/104 on the 20th December, 1993. (Online) Available: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ViolenceAgainstWomen.aspx>, Accessed: 14/04/17.

‘crime against humanity’. The International Criminal Court defines the elements of rape as a crime against humanity in Article 7 paragraph 1 when:

- i. The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
- ii. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such or another person, or by taking advantage of a coercive environment or the invasion was committed against a person incapable of genuine consent.
- iii. The conduct was committed as part of a widespread or systematic attack directed against a civilian population
- iv. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systemic attack directed against a civilian population.¹⁹¹

The reconceptualisation of rape as a crime against humanity was significant as it reinforced that rape is not merely an unfortunate accidental by-product of war, but rather, a strategic method used to humiliate and destroy communities. In recognising the act of rape as a human rights violation in conflict-related contexts, the moral wrong and harm of rape have consequently been conceptualised in collective terms. For similar reasons that rape is considered a crime against humanity in conflict related contexts, I will demonstrate how this definition might apply in everyday contexts and the implications of doing so.

The wrong of rape in everyday contexts

In outlining how terrorism is not always public or committed by enemies of the State, Claudia Card’s (1991) chapter ‘Rape as a terrorist institution’ provides a thought-provoking basis to demonstrate how rape as a crime against humanity

¹⁹¹ International Criminal Court (2011) ‘Article 7 (1) g) -1 Crime Against Humanity of Rape’, p.8, (Online) Available: <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>
Accessed: 21/04/17.

in conflict-related contexts can be extended to the everyday experiences of women.¹⁹² Unlike rape in war, the institution of rape operates covertly. Rape is not committed by a defined enemy, but rather, an unstructured collective of individual men who single out women for victimisation on the basis of their sex and gender identity.¹⁹³ While laws officially prohibit rape, rape is systemic and widespread. The type of violence I am referring to is therefore not limited to personal experiences of rape, but also the *threat* of men's violence. As Christopher Heath Wellman (2006) highlights "the oppression of violence consists not only in its direct victimization but also in the daily knowledge shared by members of oppressed groups that they are liable to violation, solely on account of their group identity."¹⁹⁴ Indeed, rape is an act which poses a constant threat to women and operates in the backdrop of most women's daily lives. Susan Griffin (1971) declares that she has "never been free from the fear of rape". Similarly, Cahill (2001) states that although she has not been a victim of rape herself, "the threat of rape has a profound effect on the structure and quality of [her] life."¹⁹⁵ The commonality in women's heightened sense of fear is significant as it makes women vulnerable to manipulation by creating a coercive environment and state of affairs that they would rationally reject in different circumstances.

As outlined in Chapter 1, women are sometimes perceived to be "asking for it" if they walk home alone at night, drink excessively, or dress too provocatively.¹⁹⁶ As a consequence, women may not allow themselves to walk alone at night even though they believe that they should be able to. While such rules imply that there are legitimate measures women can take in order to avoid being raped, sexually assaulted or harassed, they are irrational given that women are statistically more likely to be raped or sexually assaulted by someone that they know in a private place. Indeed, rape myths and rape avoidance rules have played a powerful role in perpetuating fear and legitimising superficial

¹⁹² Claudia Card (1991) 'Rape as a Terrorist Institution', in RG Frey and CW Morris (eds.), *Violence, Terrorism and Justice*, (Cambridge University Press: Cambridge), pp. 296-319.

¹⁹³ The claim that men form an unstructured collective will be defined and discussed in Chapter 3.

¹⁹⁴ Christopher Heath Wellman (2006) 'A Defense of Stiffer Penalties of Hate Crimes', *Hypatia*, Vol. 21, No. 2 (Spring 2006), p. 67.

¹⁹⁵ Ann Cahill (2001) 'Introduction: The Problem of Rape', *Rethinking Rape*, p. 1.

¹⁹⁶ Claudia Card (1991) 'Rape as a Terrorist Institution', p. 309.

responses to rape based on unfounded socio-cultural assumptions that are inextricably tied to dominant ideologies concerning the status of women in society. Rather than seeking to create a society in which women need not fear male sexual aggression, women are told to be evermore careful. This is extremely problematic as the ever-present fear of rape significantly limits women's capacity to participate fully in society as equal citizens.

From this, the wrongness of rape as a crime against humanity can be found in the way in which it is a moral violation to all women. As Burgess-Jackson (2000) identifies, crimes such as murder, theft and kidnapping set back their victims' interests in numerous ways, but few crimes set back the victim's interest in *moral, political and legal equality* in the way that rape does.¹⁹⁷ In shifting the onus onto women, the widespread acceptance of rape myths and in turn, compliance with rape avoidance rules, have resulted in a paternalistic approach to women's safety by systematically policing women's behaviour and impairing their ability to move about freely in ways that simply do not affect men. Consider Larry May's (1994) experience:

Several years ago, at a social occasion in which male and female professors were present, I asked offhandedly whether people agreed with me that the campus was looking especially pretty at night these days. Many of the men responded positively. But all of the women responded that this was not something that they had even thought about, since they were normally too anxious about being on campus alone at night, especially given the increase in reported rapes recently.¹⁹⁸

May's experience is significant as it highlights the very banality of rape in women's everyday lives. As Claudia Card (1999) highlights, "similarly to the rules of grammar, the rules of rape are second-nature to women."¹⁹⁹ Women are forced to accept that there are geographical areas that are deemed

¹⁹⁷ Keith Burgess-Jackson (2000) *A Crime against Women: Calhoun on the Wrongness of Rape*, p. 289.

¹⁹⁸ Larry May and Robert Strikwerda (1994) 'Men in Groups: Collective Responsibility for Rape', *Hypatia*, Vol. 19, No. 2, p. 147.

¹⁹⁹ Claudia Card (1999) 'Rape as a Terrorist Institution', p. 299.

dangerous. Consequently, women's daily lives are ordered around the threat of men's violence. While the prevalence of rape may not stop women from pursuing all of their interests, it seriously subverts or thwarts individual agency and mobility. In a society where women are constantly threatened by rape, the livelihoods and prospects of women are significantly altered. Timothy Beneke (1982) notes that the prevalence of rape "hurts women economically, undercuts women's independence, destroys solitude and restricts expressiveness."²⁰⁰ Similarly, Rashida Manjoo (2016) states that "the experience or threat of violence can further deprive women of their right to participate in the political, social and cultural life of the country within which they live."²⁰¹ In short, men's violence against women not only serves as crimes and violations of individual victims, but also as an "obstruction to full citizenship and substantive equality" by impeding and obstructing women's capacity to participate in public life as equal citizens.²⁰²

At first glance, the claim that rape could be considered a crime against humanity in an everyday sense appears merely hyperbolic. However, when considering everyday experiences of rape and the fear of it against the International Criminal Court's criteria as outlined on pages 67-68, it is only clause iv of Article 7(1) which is incongruent. Given that individual perpetrators invade the body of another through penetration by force or the threat of force, take advantage of a coercive environment or commit the act against a person incapable of genuine consent, and it is part of a widespread or systemic attack against a civilian population, clauses i to iii are sufficiently met. Clause iv states that the perpetrator must have an awareness of how his actions are intended as part of a widespread or systematic attack on a specific group.²⁰³ For the reasons I have already discussed, this cannot clearly be said to be the case for everyday incidences of rape. Despite this, intention is only a requirement in a

²⁰⁰ Timothy Beneke (1982) *Men On Rape*, (New York: St Martins Press), p. 170.

²⁰¹ Rashida Manjoo (2016) 'Special Guest Contribution: Violence Against Women as a barrier to the realisation of human rights and the effective exercise of citizenship', *Feminist Review*, Vol. 112, No. 1, p. 12.

²⁰² *Ibid.*

²⁰³ International Criminal Court (2011) 'Section 7 (1) g) -1 Crime Against Humanity of Rape', p.8, (Online) Available: <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>
Accessed: 21/04/17.

criminal sense, not moral. While fully assessing rape as a crime against humanity is beyond the scope of this chapter (and thesis), it appears that rape cannot be understood as a *crime* against a collective given the lack of intention and the implausibility of imposing criminal sanctions. Instead, the act of rape should be considered as a *moral violation* to a collective. If we want to effectively combat the prevalence of rape, how rape is understood should capture the moral essence of its wrongness. It is philosophically, socially and legally crucial that we have a sufficient and coherent understanding of rape and its wrong-making characteristics. Given the complexity and widespread harm of rape to women, any attempt to treat it as an isolated phenomenon is bound to be insufficient. Although it would be a mistake to ignore why rape is wrong on an individual level, individualistic accounts assessing the wrongness of rape are fundamentally flawed as they fail to account for the underlying forces that shape how the act of rape has existed historically and continues to persist today. While the men responsible for acts of violence against women in an everyday sense are not a highly organised collective, this does not mean that we cannot accept that rape is a collective violation which encompasses a wide variety of human rights abuses. While rape as a crime against humanity does not wholly apply, it offers an insight into what it would mean to think about rape as a systemic violation to a specific social group.

Based on individualistic conceptions of the wrongness of rape, the law and social interventions have sought to deter and control the prevalence of rape on an individual basis, instead of focusing on how the practice of rape can be eradicated entirely. In continuing to ignore the systemic nature of rape as a gendered crime, systems of oppression are maintained. If we accept that rape is a grave moral wrong grounded in patterns of inequality and institutional roles, positions and powers, how then, do we understand responsibility for its consequences? Given the systemic character of rape, individualistic conceptions of responsibility fall short in addressing collective *moral* violations. Subsequently, Chapter 3 provides a theoretical and practical consideration of collective moral responsibility for rape.

Collective Responsibility for Rape

“Ironically, often those with the greatest interest in reproducing structural injustices are also those with the greatest power to influence their transformation”

(Iris Marion Young, 2003)²⁰⁴

Violence against women is a men’s issue. While only a minority of men are violent and sexually abusive towards women, all men can have a positive influence on the culture and environment that facilitates and allows for other men to be perpetrators. In this final chapter, I will challenge the common sense view that rape is *only* the responsibility of individual rapists. Drawing upon the notion of collective responsibility and the long-standing structure/moral agency problem, I will demonstrate that rape is soluble,²⁰⁵ but not within the narrow confines of individualistic conceptions. In recent years, a number of scholars in the UK, US and Australia have persuasively argued that men should take responsibility for preventing rape and kindred phenomena by challenging the behaviours and attitudes that feed into men’s violence against women: (Paul Kirby [2012], Claudia Card [1991], Jackson Katz [1999], Larry May and Robert Strikwerda [1998], Michael Flood [2009] and R.W Connell [1995]). Despite this growing recognition, attempts to establish men’s collective responsibility for rape remain highly controversial. This largely stems from widespread sceptical considerations and objections to the very use of collective responsibility itself.

Indeed, there are even difficulties in talking about men as a group and discussing them as a ‘collective’ in themselves. For my discussion, I do not mean to imply that men and boys are a homogenous group, who are all equally socially situated and share the same relationship to acts of violence against women. Men’s lives, similarly to women’s, are of course also shaped by multiple

²⁰⁴ Iris Marion Young (2003) ‘Political Responsibility and Structural Injustice’, Presented as the Lindley lecture, Philosophy Department, University of Kansas, 5th May 2003, p. 18, (Online) Available: https://www.bc.edu/content/dam/files/schools/cas_sites/sociology/pdf/PoliticalResponsibility.pdf, Accessed: 15/04/17.

²⁰⁵ What I mean by ‘soluble’ is that it is possible to have a large reduction in the incidence and prevalence of rape.

forms of social and personal difference, including: ethnicity, sexuality, class, age, and ability/disability. Although highly structured in a strictly biological and social group sense, I define men as an *unstructured collective*, where they constitute a large and uncoordinated set of individuals who are not generally *knowing* participants in collectively harmful practices against women. While individual intentions may vary considerably, at a fundamental level, men share collective *intentionality* in their basic beliefs, values and way of life.²⁰⁶ This is significant, as it is this underlying set of attitudes that brings about the material, harmful outcome of rape and kindred phenomena. It is therefore possible to think of patriarchy as the oppressive practices of men coordinated by common interests, but not organised intentionally. As Claudia Card (1991) identifies, to claim that all men are implicated in the practice of rape is not the equivalent to saying that men sit together in smoke-filled rooms in some sort of patriarchal conspiracy.²⁰⁷ Rather, it is to describe the complex and various ways in which individual men's roles as bystanders, facilitators and beneficiaries of rape constitute a spectrum of harm against women. As a group, men have sufficient structure, and therefore the necessary agency needed to disrupt the reproduction of patriarchal structures that distribute benefits and harms inequitably.

This type of classification has justifiably raised concerns as to whether or not it is ever appropriate to hold individual group members morally responsible for the harm that other group members cause. However, as this thesis has attempted to establish, rape should not be understood as isolated acts, but rather, as a social practice belonging to larger systems of attitudes, values and cultural practices that are taught and learned early in life. This point is clearly reflected in Michael Flood's (2013) assertion that "when an individual man hits an individual woman, pressures her into sex, or sexually harasses her, his actions are only made possible because of a wider web of collective and structural conditions".²⁰⁸ In other words, men's individual actions, although sometimes

²⁰⁶ For example, based on dominant constructions of what it means to be a 'real man' (these features will be expanded on later in the chapter), men may see their way of life as being the protector of the family or their career as being the most important.

²⁰⁷ Claudia Card (1991) 'Rape as a Terrorist Institution' in R. Frey & C. Morris (Eds.), *Violence, Terrorism, and Justice* (Cambridge: Cambridge University Press).

²⁰⁸ Michael Flood (2013) 'Involving men in ending violence against women: Facing challenges and making change', *Keynote address, White Ribbon Conference, Sydney 13-15th May 2013*, p. 4 (Online) Available:

seemingly innocuous, contribute to wider social and structural dimensions of men's violence against women. Men's responsibility as a group therefore lies in the uncoordinated, but nonetheless systemic activity of men, whose individual actions each contribute only imperceptibly to processes that lead to unjust outcomes. For example, men may justifiably struggle to understand how their particular actions can be significantly attributed to the prevalence of rape given that there is not a clear line of *direct* causality between say making a rape joke or talking about women in derogatory ways to a friend and that friend going on to rape a woman. In other words, a lack of clear causality is used to deny the harmful contributions individuals can make to the collective culture which facilitates individual actions. However, while an individual man may not perceptibly harm any victim directly, the sum of harm to all women is morally significant. Even though the majority of men may disapprove of or even protest against violence against women, their relation as individuals to these collective harms constitutes a domain of complicity.²⁰⁹

This chapter is divided into three sections. Part one challenges the individualistic notion of responsibility that currently prevails by addressing some of the main conceptual issues relating to the legitimacy of collective moral responsibility in order to highlight its use as both an applied and theoretical concept. In exploring how moral agents should think about their complicity in relation to social and structural injustices, I maintain that collective moral responsibility, far from diluting or removing the responsibility of individuals or merely acting as a means of ascribing guilt, has the potential to influence individuals to take part in collective action, and to stimulate them into imagining

<http://gjss.org/sites/default/files/issues/chapters/papers/GJSS%20Vol%2012-3%20Flood.pdf>,

Accessed: 28/08/16.

²⁰⁹ David Miller also makes this point powerfully in relation to racial violence in the early twentieth century US. In stating that individuals can share a collective responsibility for outcomes that they did not specifically intend, Miller identifies how acts of violence against blacks were carried out in the context in which Southern whites passively sympathised, even if the overwhelmingly majority of whites condemned the behaviour or were not actively involved themselves in perpetrating harm. In virtue of participating in their community, Southern whites generally helped to sustain a climate of opinion that allowed for blacks to remain in a state of subjugation. The more general point here is that when a community of people shares a set of cultural values, one of these effects is to encourage behaviour that may result in an undesirable outcome, meaning that the community shares responsibility for that outcome, even if they disapprove.

See David Miller (2004) 'Holding Nations Responsible', pp. 252-253.

new possibilities for positive change. Part two addresses the sources of men's moral paralysis. While it is uncontroversial that rape and acts of sexual violence are overwhelmingly carried out by men against women, most men do not regard violence against women as something for which they are responsible. In understanding why this is, I draw upon the long-standing structure/agency problem to examine how current socio-cultural conditions constitute a serious impediment to men's moral perception and agency on the issue. Lastly, part three argues that there are grounds for cautious optimism in ascribing collective moral responsibility for rape.

Part One

Individual vs Collective Responsibility

If I were asked to put forward an ethical principle which I considered to be especially certain, it would be that no one can be held responsible, in the properly ethical sense, for the conduct of another. Responsibility belongs essentially to the individual.

(H.D Lewis, 1948)²¹⁰

Although there has been a burgeoning body of literature in recent years, moral philosophers have tended to avoid the problem of collective responsibility.²¹¹ Indeed, Western philosophical tradition is well accustomed to the common sense view that we can, and should, *only* regard an individual blameworthy for wrongs and harms that they produce on their own. The concept of collective responsibility is condemned in the belief that it is incoherent and inappropriate to blame or punish an abstract identity for what they did or did not do. H.D Lewis' (1948) statement above reflects the widely shared view that responsibility belongs essentially to the individual and that ascriptions of

²¹⁰ H.D Lewis (1948) 'Collective Responsibility', *The Journal of the Royal Institute of Philosophy*, Vol. XXIII, No. 84, January 1948, p. 3.

²¹¹ Christopher Kutz (2000) 'Introduction', *Complicity: Ethics and Law for a Collective Age*, (Cambridge: Cambridge University Press), p. 2.

responsibility to collectives are a metaphysical absurdity.²¹² While individual responsibility provides clear boundaries to apply traditional moral principles, there are many cases, past and present, of harms inflicted by people in aggregate where ascribing responsibility at a group-level seems appropriate. No one individual can be said to be responsible for massive atrocities such as the Holocaust or colonial injustices on indigenous populations. A recognition of shared responsibility is already present in everyday discourse, and people frequently speak in this way. For example, we might say that “Germans are responsible for the atrocities of the Second World War”, or “humans are responsible for climate change”. Although members may not fully satisfy the conditions of being held personally responsible, many of the most serious harms cannot be solely attributed to the actions of individual agents.

In many ways, there is both an intuitive and practical sense that individual responsibility is not enough. Consider Brian Lawson’s (2013) example:

Imagine a scenario in which three individuals, A, B and C, conspire to stab a victim, D to death. Each of the perpetrators manages to land a substantial blow, but each subsequently panics and runs off. Suppose, further, that none of the individual wounds alone, nor any two of the wounds, are sufficient to kill D, but that the three wounds taken together are sufficient to cause D to bleed to death.²¹³

Intuitively, we want to be able to say that the group has murdered D. However, while each individual’s actions have wounded D, neither A, B or C performed an action that was sufficient alone for D’s death. Each member of the group could plausibly say that they individually did not murder D. If none of the three individuals are responsible for D’s death, presumably no one is responsible. Lawson (2013) states that in terms of criminal prosecution, we could easily charge A, B and C with assault with a deadly weapon. However, this offence fails to sufficiently capture the gravity of the offence given that the victim has died. The problem with an exclusive focus on individual responsibility is that this approach leaves us without the tools necessary to hold groups responsible for

²¹² Jan Narveson (2002) ‘Collective Responsibility’, *The Journal of Ethics*, Vol. 6, No. 1, pp. 179-198.

²¹³ Brian Lawson (2013) ‘Individual Complicity in Collective Wrongdoing’, *Ethical Theory and Moral Practice*, Vol. 16, No. 2, April 2013, p.229.

wrongs that are brought about together. Conceptually and practically, it seems that we gain little from segregating the harm done by a single agent to that of a collective. The simple fact is that the whole often constitutes more than the sum of its individual parts. In this context, it means that applying individual responsibility neglects the crucial impact of collective action. In order to adequately understand and assess harm caused by groups, we require tenable ascriptions of collective responsibility.

It is an undeniable feature of our social life that we will inevitably find ourselves connected to wrongs and harms that fall outside the paradigm of individual wrongdoing. As human beings, we are implicated in wrongdoing through our geographic location, nationality, and associations with other people and institutions. Given that people often have little or no choice in their membership of any given collective, a question of *fairness* arises in ascribing responsibility for faults the individual alone did not intend to produce. This is particularly pertinent given that we have involuntary membership to all sorts of collectives based on our sex, gender, ethnicity, nationality, and even the families that we are born into.²¹⁴ For example, we have little direct control over being a citizen of a nation that drops bombs and kills other populations. What moral responsibilities do citizens then bear for the actions that the state undertakes in their name or on their behalf? Phillip Pettit (2007) argues that while it may not always be wholly appropriate to hold loose groups, such as citizens of a nation, responsible, ascribing collective responsibility can have positive consequences in placing an incentive for members of groups to organise themselves against the condemned behaviour.²¹⁵ In the case of citizens belonging to a nation wrongfully dropping bombs, the implication of complicity may provide an incentive for them to come together and develop ways of holding their government accountable, thus preventing further violence.

A consideration of Pettit's (2007) argument is particularly relevant to building the case for men's collective moral responsibility for rape, where men, on the basis

²¹⁴ While gender and sex are not fixed identities, I have included them as examples of involuntary membership due to the fact that our biological sex and gender identity are generally *prescribed* to us at birth.

²¹⁵ Phillip Pettit (2007) 'Responsibility Incorporated', *Ethics*, Vol. 117, No. 1, p. 201.

of their biological sex and gender identity, may find themselves morally responsible for harms caused *directly* by a minority of that collective. Bob Pease (2015) states that “most men are not violent and most men treat the women close to them with respect and care.”²¹⁶ It would then seem that most men do little to contribute to the prevalence of men’s violence against women and therefore have no responsibility for preventing it. However, in terms of bearing the cost for fear-reducing measures, it is men as a collective, not just rapists, who are the source of women’s fear of rape and of those crimes associated with rape. The claim that most men are not violent is not incompatible with the fact that violence against women is primarily perpetuated by men against women. It may seem unfair that in virtue of belonging to a collective men acquire certain moral duties. However, implicating all men in the prevalence of rape reinforces the idea that as a group, men can do more to avoid the wrongful harm instead of just avowing that some men’s use of violence against women is morally abhorrent. In expanding the scope of individual moral responsibility to include assessments of what men do in relation to others it is highlighted that it is not beyond the capacity of men as a group to end violence against women.

We seem to have great difficulty in accepting that our society is fundamentally structured by collectives in which we, as individuals, all play a part. In thinking about men’s violence against women in purely individualistic terms, we have created a system that offers protection to the consequences of harm induced by men as a collective. For example, in vocalising a hypothetical sexual interaction with a female through common phrases such as “I would”,²¹⁷ the consent of the woman in question is irrelevant and a sense of male sexual entitlement is strengthened. When one places the actions of individuals against this harmful context, a link between individual acts are made apparent. Yet, in focusing on only the responsibility of rapists, these comments, beliefs and attitudes towards women are able to operate covertly without critical reflection. If we are to facilitate real change, men’s individual actions must be understood as interconnected, as morally pressing issues call for synchronised actions by

²¹⁶ Bob Pease (2015) ‘Disentangling Men from Patriarchy: Rethinking the Man Question in Masculinity Studies’, in Michael Flood and Richard Howson’s (eds.) *Engaging Men in Building Gender Equality*, (Newcastle Upon Tyne: Cambridge Scholars Publishing), p. 58.

²¹⁷ “I would” is commonly used within certain male peer groups with regards to whether a female meets a standard to which they would want to have sex with them.

dominant groups responsible for the harm. Although it may seem unfair to some, a recognition of collective responsibility in an increasingly interdependent world makes it even more important to think critically and reflectively about what we do as collectives and what responsibilities we stand to bear in virtue of belonging to various collectives.

Legal vs. moral responsibility

Discussions on collective responsibility tend to elicit extreme responses in the fear that conceptualising moral culpability in this way will somehow absolve or diminish the blameworthiness of individual offenders by getting them “off the hook too easily”.²¹⁸ On the 10th February 1992, former heavyweight boxing champion Mike Tyson was convicted of raping Desiree Washington, an eighteen-year-old college student. In an attempt to persuade the Judge to show leniency, Tyson’s lead defence lawyer, Vincent J. Fuller, stated that Tyson grew up in a “male dominated world” and therefore had trouble “relating well to women.”²¹⁹ As Larry May and Robert Strikwerda (1992) identify, this is largely true. At the age of sixteen, Tyson was taken from a home for juvenile delinquents in New York and raised by boxing promoters.²²⁰ While noting all of this, Joyce Carol Oates’ *Newsweek* essay on Tyson’s rape trial condemns attempts to use ‘culture’ to excuse Tyson’s behaviour. Oates concludes by stating that “no one is to blame except the perpetrator himself.”²²¹ However, objections to collective responsibility based on the belief that it will exonerate individuals from criminal responsibility are based on a false dichotomy between personal responsibility and structural causation.

The tendency to think of collective responsibility as irreducible and believe it will

²¹⁸ Larry May & Robert Strikwerda (1998) ‘Rape and Collective Responsibility’ in Larry May’s *Masculinity and Morality*, (London: Cornell University Press) p. 96.

²¹⁹ E.R Shipp (1992) ‘Tyson gets 6 year prison term for rape conviction in Indiana’, 27th March 1992, *New York Times*, (Online) Available: <http://www.nytimes.com/1992/03/27/sports/tyson-gets-6-year-prison-term-for-rape-conviction-in-indiana.html?pagewanted=all>, Accessed: 02/04/17.

²²⁰ Larry May and Robert Strikwerda (1994) ‘Men in Groups: Collective Responsibility for Rape’, *Hypatia*, Vol. 9, No. 2, p. 137.

²²¹ Joyce Carol Oates (1992) ‘Rape and the Boxing Ring’, *Newsweek*, 23rd February 1992, (Online) Available: <http://www.newsweek.com/rape-and-boxing-ring-200652>, Accessed: 20/03/17.

somehow supersede individual responsibility and criminal liability is further reflected in Jan Narveson's (2002) assessment of collective responsibility:

And that is what is wrong with collective responsibility. Precisely because it will not reduce, it precludes you from getting at anybody – all you can do is wave flags and write poems. But in fact, it was this person's grandfather who was brutally murdered by that soldier and his buddies, this other person's sister who was raped and tossed down a well, these people over here who were herded into a gas chamber, by these particular soldiers. Only individual agents can do such things – this grandfather and that sister were not murdered by an irreducible entity. And neither was anyone else who was in any way harmed.²²²

However, the assertion that collectives are not the kind of thing of thing that can be held responsible for wrongdoing ignores the clear distinction between *individual legal responsibility* and *collective moral responsibility*. Individual legal responsibility designates guilty subjects for conviction. In contrast, collective moral responsibility provides appropriate strategies for addressing widespread harm and wrongdoing associated with the actions of collective groups. For example, there is a clear difference between how we might hold a German citizen morally culpable in comparison to a member of an execution squad for their role in the Holocaust. Similarly, ordinary men's participation in society does not, by default, make them subject to the same sanctions as if they committed the crime of rape themselves. My argument is not that men as a collective should have a legal responsibility. The imperceptibility of individual actions which may facilitate men's violence against women would make any legal claim absurd. My claim is that men as a collective have a moral responsibility. Moreover, it also does not follow that collective responsibility would allow perpetrators to escape their own culpability on the grounds that they are mere products of their society and thus implicated in processes beyond their control. In making the case for men's collective responsibility for rape, the framework of collective responsibility allows for the same standards and consequences of legal responsibility to apply to individual wrongdoers deemed more culpable for their *direct* contributions to the harm in question.

²²² Jan Narveson (2002) 'Collective Responsibility', p. 185.

In recognising this fact, we therefore need not choose between punishment and prevention, or between personal and social responsibility. Individual and collective responsibilities are complimentary, not mutually exclusive categories. Former British Prime Minister, Tony Blair's (1993) famous slogan "tough on crime and tough on the causes of crime" clearly highlights this point.²²³ What this means is that if we want to address criminal behaviour, we need a strategy that deals with the underlying causes of crime, as well as an effective criminal justice system that punishes individuals committing crimes. In the same vein, to prevent acts of men's violence against women, we must not only address individual offenders, but also the socio-cultural conditions that foster criminality. If we do not address both the structural and individual determinants of criminal behaviour, it is like trying to use a seesaw with just one person. It is only when both are in place that any sort of progress is made. While Tyson's defence lawyer was almost certainly using 'culture' to mitigate legal culpability, there is a genuine insight in his statement. The claim that men who grow up in hyper masculine environments may have trouble "relating well to women"²²⁴ points us towards the broader context of rape in a deeply gender unequal society, where dominant constructions of masculinity can be a significant risk factor for perpetration. Together, a recognition of both individual and collective responsibility provides a more nuanced conception of accountability, and in turn can help form a practical basis to address cases of institutional wrongdoing.

Backward-looking vs. forward-looking claims of collective responsibility

The legitimacy of collective responsibility as a tenable concept has further been challenged by claims that it does little more than operate as a means of assigning blame and moral guilt for what a group of people *indirectly* did, or failed to prevent.²²⁵ Following the end of the Second World War, discussions on

²²³ I'm grateful to Nigel Pleasants for suggesting Tony Blair's famous slogan to help explain this point.

²²⁴ E.R Shipp (1992) 'Tyson gets 6-year prison term for rape conviction in Indiana'.

²²⁵ As discussed in Margaret Gilbert's (2006) article on collective moral responsibility and its implications for group members, the language of collective responsibility has primarily been used to determine "who's to blame". See Margaret Gilbert (2006) 'Who's to blame? Collective Moral Responsibility and its Implications for Group Members, Midwest Studies in Philosophy, pp. 94-114.

collective responsibility in philosophical thought have primarily focused on negative, backward-looking types of collective responsibility that are tied to ascriptions of blameworthiness, indignation and remorse. Backward-looking types of collective responsibility refer to considerations of responsibility applied retrospectively to past generations and/or present members for historical misdeeds. For example, backward-looking forms of collective responsibility are captured in the view that past German citizens were responsible for the rise of Nazism. Alternatively, backward-looking collective responsibility can also be applied to present members who inherit moral culpability because they may be living in a region seized long ago from its Indigenous occupants. Such claims have been vehemently criticised for imposing 'collective guilt' on generations who are believed to be held unfairly responsible for what *others* did.

For example, the 26th May marks 'National Sorry Day' in Australia,²²⁶ where Australian people and politicians commemorate and apologise for the historical injustices done to Aboriginal people:

For the pain, suffering and hurt of those stolen generations, their descendants and their families left behind, we say sorry. To the mothers and the fathers, the brothers and the sisters, for the breaking up of families and communities, we say sorry. And for the indignity and degradation thus inflicted on a proud people and a proud culture, we say sorry.

(Former Australian Prime Minister, Kevin Rudd's address to the nation in 2008)²²⁷

However, in prompting current generations to apologise for acts of historical wrongdoing, this is a case where collective responsibility for past wrongs can be seen to function as an impediment to peace-building and reconciliatory ambitions. As Raimond Gatia (2000) identifies "it matters to us, as individuals, and members of political communities, that we are just and honourable, that our

²²⁶ Australian Government (2017) 'Sorry Day and the Stolen Generations', (Online) Available: <http://www.australia.gov.au/about-australia/australian-story/sorry-day-stolen-generations>, Accessed: 08/04/17.

²²⁷ Australian Government (2017) 'Apology to Australia's Indigenous Peoples' (Online) Available: <http://www.australia.gov.au/about-australia/our-country/our-people/apology-to-australias-indigenous-peoples> Accessed: 07/04/17.

institutions are decent.”²²⁸ Attempts to comprehend and reconcile Australia’s fraught past have therefore been particularly socially and culturally unpalatable. Raymond Evans and Bill Thorpe (2001) observe that it has been deeply unsettling for national audiences to come to terms with a more critical interpretation of their national history that recognises the existence of a social order that once permitted the state-sponsored extermination of a vulnerable minority’s cultural identity.²²⁹ Consequently, Australians continue to maintain a narrow and defensive form of nationalism that keeps Indigenous experiences and questions of genocide peripheral to dominant narratives of British Imperialism.²³⁰

The parochial use of collective responsibility in these contexts has therefore understandably resulted in visceral reactions against its practical applicability. In making the claim that men are collectively responsible for violence against women, men tend to immediately feel guilt-tripped about the issue. Adrian Howe (2008) observes that even calling men’s violence against women “men’s violence” incites outrage: “*but not all* men are violent, women are violent too.”²³¹ In the absence of direct harm from their own individual actions, it is easy for men to turn away, to assert that they do not commit this violence and believe that it is unfair to impose collective guilt on all men for the crimes of a minority. The tendency for men to feel blamed and defensive about their individual role in enabling violence against women is clearly evidenced in the widespread dismissal of women who attempt to engage men as being ‘anti-male’, ‘men haters’ or ‘feminazis’.

However, there is nothing ‘anti-male’ in calling attention to the various ways in which masculinity is connected to these problems. Rather than imposing blame for facilitating acts of rape, the application of collective responsibility in this

²²⁸ Raimond Gatia (2002) ‘Introduction – Take Your Time’, *A Common Humanity: Thinking about love, truth and justice*, 3rd edition, (London: Routledge), pp. 12-13.

²²⁹ Raymond Evans & Bill Thorpe (2001) ‘Ingenocide and the Massacre of Aboriginal History’, in *Overland*, Vol. 163, No. 1, p. 29.

²³⁰ Sarah Maddison (2012) ‘Postcolonial guilt and national identity: Historical injustice and the Australian settler state’, *Journal for the Study of Race, Nation and Culture*, Vol. 18, No.6, p. 695.

²³¹ Adrian Howe (2008) ‘Yes, Minister, ‘sex violence policy has failed’, in (eds.) Gaye Letherby, Kate Williams, Philip Birch and Maureen Cain’s *Sex As Crime?* (Willan Publishing: Cullompton), p. 222.

context aims to promote the positive influence men can play as partners in prevention. Unlike Australians taking responsibility for the past treatment of Indigenous peoples, or Germans for the Holocaust, an assessment of men's collective responsibility for rape is fundamentally different. This conception extends beyond negative backward-looking considerations of moral assessments to positive forward-looking considerations of moral obligation. Backward-looking collective responsibility is counter-revolutionary as the association with guilt and blame functions as an insurmountable barrier for engaging men. For example, a backward-looking claim is "we are responsible for the act", whereas a forward-looking claim is "we are responsible for cleaning this up". Contemporary men as a group cannot be meaningfully collectively responsible for *all* acts of rape and violence against women that have occurred in the past. However, they are morally responsible for improving the ideologies and structures that maintain it. In this view, acceptance of collective moral responsibility can create positive roles for men in violence prevention as bystanders, role models, supporters and advocates.

Question of equal responsibility

Now that I have addressed the main criticisms of collective responsibility as a concept, there is still a difficulty in determining whether individuals bear similar degrees and forms of responsibility for the institution of rape. In a Foucauldian sense, everyone is complicit and implicated in gendered and other modes of power.²³² Sam Keen (1991) sees both men and women as participating together to perpetuate a system of violence, erroneously concluding that both men and women should share an *equal* responsibility for rape.²³³ As identified in both the Introduction and Chapter 1, women are also bound up in the institution of rape. Women can be thought to be responsible through complicity or lack of challenge in their shared contribution to patterns of socialisation that

²³² Foucault conceptualises power as a decentralised and anonymous force that produces social bodies and realities. In this view, power does not work from the top down or emanate from a central, identifiable source (e.g. a small group of powerful men). Rather, power is ubiquitous - it is *relational* and diffused throughout both social bodies and social structures. For example, in *Discipline and Punish*, Foucault demonstrates how modern disciplinary power is exercised between individuals, through a general level of social discourse and a variety of different social institutions.

Michel Foucault (1997) *Discipline and Punish: the Birth of the Prison*, translated by Alan Sheridan (London: Penguin Books).

²³³ Sam Keen (1991) *Fire in the Belly: On Being a Man*, (London: Piatkus), p. 47.

may reinforce or legitimise problematic forms of masculinity and femininity. The acknowledgement that women are complicit in the institution of rape appears akin to the controversial claim made by Raul Hilberg (1961), among other prominent Jewish scholars, that elements of Jewish society, such as Jewish councils, were complicit in the Holocaust. This view is significant, as it is consistent with the point that women bear *some* responsibility for tackling the injustice. However, it does not follow that all those who are complicit should be considered *equally* responsible. The language of women having equal responsibility is fundamentally dangerous because it detracts from the fact that it is the perpetrators and beneficiaries of inequalities that structure this violence. Women's contribution and inaction cannot therefore be understood as morally culpable in the same way as men's, as women may act from a coerced or restricted starting point. While both men and women bear a shared responsibility for addressing rape, groups who hold the most power and privilege should bear the greatest ethical responsibility to act against injustice.

Although it is clear that women are made worse off by the prevalence of rape in society, Keen's (1991) claim of equal responsibility represents an unwillingness to see *all* women as victims and *all* men as perpetrators or beneficiaries of this violence. In many ways, this view is justified in the sense that the dichotomy between universal perpetrators and victims ignores the various ways in which the act of rape is part of a larger system of patriarchal relations that are damaging to *both* men and women. Of course, there is no single experience of masculinity, meaning that not *all* men may feel harmed by patriarchal relations in the same way. No doubt few men *feel* harmed, but the point is they may be harmed nonetheless. What it means to be a man is influenced by multiple forms of social difference, including the intersectionalities of class, ethnicity, sexual orientation, age and level of ability/disability. While lived experiences of masculinity vary considerably, it can be argued that there is still an overarching cultural message about what it means to be a 'real man'. Robert Brannon (1976) was the first to identify this with his description of the four main pillars of hegemonic masculinity: men should not be feminine in any way ("no sissy stuff"), men should strive to be respected for status and achievement ("the big wheel"), men should never show weakness ("the sturdy oak"), and men should seek

adventure and risk, even accepting violence when necessary (“give ‘em hell”).²³⁴

Based on these four ideals, there is a substantial body of empirical evidence which supports the view that men bear significant costs in terms of their relationships with others and their emotional and physical wellbeing.²³⁵ For example, the first principle of anti-femininity explicitly asserts that to be feminine is to be *weak*. This may mean that characteristics predominately considered to be exhibited by women such as negotiating, talking about feelings, and empathising with others are all behaviours that are considered to be ‘feminine’, and therefore undesirable. Due to fears of being perceived as feminine, or in turn, ‘gay’, an adherence to these ideals mean that men may be less likely to seek help for mental-health related issues, less likely to form strong bonds with their children, more likely to abandon or hide ‘unmasculine’ interests that may be deeply fulfilling to them, and more likely to participate in violent or risky behaviour.²³⁶

In turn, the ideals surrounding what it means be a ‘real man’ preserve and perpetuate the conditions that facilitate men’s violence against women. As discussed in Chapter 1, accepted social conventions and ideals surrounding what it means to be a man in sexual encounters or relationships means that men may partake in risky sexual behaviour by not taking sufficient steps necessary to ensure consent, or not respect women’s consent to sex at all. What is deeply unsettling about the possibility of negligent rapists is that while men are acting in clear violation of the law, they may not be violating any procedural norms. In other words, their investment in problematic forms of

²³⁴ Michael Kimmel (2004) ‘Gender Role Strain’, *Men and Masculinities: A Social, Cultural and Historical Encyclopaedia*, (California: ABC-CLIO Inc.), p. 353.

²³⁵ Michael Flood (2013) ‘Involving men in ending violence against women: Facing challenges and making change’, *Keynote address, White Ribbon Conference, Sydney 13-15th May 2013*, pp. 1-12, (Online) Available: <http://gjss.org/sites/default/files/issues/chapters/papers/GJSS%20Vol%2012-3%20Flood.pdf>, Accessed: 28/09/16.

²³⁶ Bill Patrick (2012) ‘Why we men need to be called out on our bullshit – because women aren’t oppressing themselves’, *XY* (Online) Available: <http://xyonline.net/content/why-we-men-need-be-called-our-bullshit-because-women-aren%E2%80%99t-oppressing-themselves>, Accessed: 10/04/17.

masculinity means that they are all still operating within the confines of the dominant rules, norms and values of their society. Men who adhere to norms which diminish the importance of consent effectively play a game of Russian roulette with their sexual practices, and there is a degree of moral luck as to whether or not a woman will label her experience as rape and the man as a rapist. These conditions make men, as a group, more susceptible to be perpetrators of sexual crimes.

Moreover, the prevalence of men's violence against women is damaging to men because it makes *all* men seem like a potential threat. Even something as simple as walking alone at night can induce a woman into a state of fear in wondering who is walking behind her and *why*. Men themselves may not even realise how their very own presence in this situation constitutes a legitimate threat to a woman's perceived sense of safety. As May and Strikwerda (1998) assert, "Until socialisation patterns are changed, it is not absurd for women to view every man as a potential rapist."²³⁷ Individual men therefore have a responsibility to recognise that they belong to a stigmatised group which is largely perceived by women as the side of the oppressors. This of course requires a large degree of critical self-reflexivity, as men must be able to conceive of themselves as complicit in social relations that are not always benign in their effects on women.

While it is within everyone's interests to re-examine masculinity, this can only be fairly conceptualised as a shared, but not *equal* responsibility between men and women. It has been highlighted that the very same argument of a shared, but not equal responsibility could be made against the attribution of collective responsibility to *all* men. In other words, it may seem unfair or appear incoherent to label all men as collectively responsible given that men also have varying degrees of involvement in rape culture. Therefore, the responsibility of individual men should be proportionate to their involvement. However, practically speaking, little would be gained in prescribing sub sets of responsibility; it is fair to assume that most men would deny any responsibility in

²³⁷ Larry May and Robert Strikwerda (1998) 'Rape and Collective Responsibility', *Masculinity and Morality* (London: Cornell University Press), p. 97.

relation to harmful patriarchal relations. Indeed, the claim that all men are collectively morally responsible in a forward-looking sense is not the equivalent of saying that all men are equally socially situated or share the same relationship to acts of violence against women. Rather, it is the claim that while only a minority of men are violent towards women, *all* men can be seen to have a positive influence on the culture and environment that facilitates and allows for other men to be perpetrators. For example, for the well-educated liberal man who never makes degrading jokes about women, his responsibility is not to refrain from making crude jokes, but to join activist communities, to engage other men to talk about the issue and to challenge those who do make degrading comments.

Indeed, as the group with the most power and privilege, men have a greater capacity to rectify harm. On one hand, men have a difficult starting point. Generally speaking, men are limited in their ability to understand men's violence against women in virtue of not being susceptible to rape, street harassment, or sexism more broadly. Michael Flood (2016) notes that men tend to "define violence more narrowly, blame victims more enthusiastically and subscribe to rape myths more strongly."²³⁸ On the other hand, men are in some ways better epistemically and socially positioned to address this harm. In a recent TED talk, Michael Kimmel (2015) reflects on teaching a sociology of gender course with a female colleague. When Kimmel walked into the room to give a guest lecture, one of the students looked up and remarked "oh finally, an objective opinion!"²³⁹ In other words, every time his colleague spoke, what the students heard was a woman. When she spoke of structural inequalities based on gender in the United States, they thought "of course you'd say that, you're a woman."²⁴⁰ Kimmel's experience as an educator demonstrates how women's attempts to engage men on issues related to gender inequality and violence more specifically are met with hostility or attempts to discredit them. In doing so, it

²³⁸ Michael Flood (2016) Information Interview, Friday 29th July 2016 [Appendix: Document 2].

²³⁹ Michael Kimmel (2015) 'Why Gender Equality is Good for Everyone – Men Included', *TED*, May 2015, [3:50] (Online) Available: https://www.ted.com/talks/michael_kimmel_why_gender_equality_is_good_for_everyone_men_included, Accessed: 09/10/16.

²⁴⁰ Michael Kimmel (2015) 'Why Gender Equality is Good for Everyone – Men Included', *TED*, [4:05].

gives men an excuse not to pay attention. While men of course still need to listen to women and their experiences, men hold a unique position as positive agents of social change based on their shared intentionality, and consequently, their ability to relate to and engage other men.

Part one of this chapter has assessed some of the main criticisms made against the legitimacy of collective moral responsibility and established that ascribing collective moral responsibility in the context of men's violence against women poses no plausible danger of allowing direct perpetrators to escape legal sanctions, nor is it an attempt to demonise all men by attributing guilt. In concluding that men bear the greatest ethical obligation to act against this injustice, part two acknowledges reasons why men do not see violence against women as their responsibility in the first place. A discussion on the sources of men's moral paralysis is significant as a recognition of the various ways in which men's moral agency is limited in this area has profound implications for prevention work in developing appropriate strategies to engage men.

Part Two

Sources of moral paralysis

It is true that most men do not commit acts of violence against women. However, it is also true that most men aren't doing much to help end this violence, either. When significant harms are being enacted by a specific collective, it is reasonable to expect individuals belonging to that collective to examine their own attitudes and practices that may contribute to the likelihood of these harms occurring, even if they do not participate in them directly. At the same time, there are good reasons to believe that a belief system reinforced by institutions and embodied by a collective can significantly infringe on an individual's ability to grasp important moral facts. Our socio-cultural environment determines, in large part, the values, attitudes and fundamental beliefs available to us. Many men are therefore unlikely to critically examine their own behaviours or beliefs, or even entertain the possibility that their actions may be seriously harmful

to women. In this sense, institutional conditions and socio-cultural norms constitute a serious impediment to men's moral perception and agency.

Men's collective responsibility (and in turn, culpability) for rape is part of a much larger structural/moral agency debate concerning whether individual agents are *unable* to know or question that practices in their society are morally wrong, or whether they choose to remain actively ignorant of their role in wrongdoing. For example, there are good reasons to believe that cultural membership can be "ethically disabling",²⁴¹ meaning that widespread moral ignorance may be attributed to agents being *genuinely* unaware of the immorality of the norms to which they routinely adhere to. Conversely, Michelle Moody-Adams (1994) dismisses claims of impairment and highlights cases where individuals may choose not to investigate their beliefs because the practice in question benefits them in some way.²⁴² For example, Neil Levy (2003) notes that "slave-owners benefit from the institution of slavery; male chauvinists benefit from patriarchy; and Nazis from anti-Semitism".²⁴³ It is therefore plausible to believe that moral agents are capable of pragmatically turning down a series of opportunities to learn alternative moral outlooks in order to maintain false beliefs that satisfy their own self-interests. While the debate surrounding the various ways in which individual morality is socially constructed, conditioned and constrained raises a plethora of interesting questions concerning the principle of diminished responsibility, the following section assumes that men's collective failure to see violence against women as an institution in which they are all implicated, appears to be a mixture of *both* inability and motivated ignorance. Despite this, there are still sufficient grounds to hold men collectively responsible for the prevalence and fear of rape.

In recognising the effects of structures on individual moral agency, ideas of collective responsibility appear to be undermined. It seems questionable that we could ever hold individuals collectively morally responsible for failing to

²⁴¹ Neil Levy (2003) 'Cultural Membership and Moral Responsibility', *The Monist*, Vol. 86, No. 2, pp. 160-161.

²⁴² Michelle Moody-Adams (1994) 'Culture, Responsibility and Affected Ignorance', *Ethics*, Vol. 104, No. 2, p. 296.

²⁴³ Neil Levy (2003) 'Cultural Membership and Moral Responsibility', p. 154.

investigate the acceptability of institutionalised practices that they have good reasons to believe are permissible.²⁴⁴ However, there are of course, a number of problems with identifying 'culture' or 'patriarchy' alone as that which explains, in virtue of its causal effects, individual beliefs and behaviours. As Michelle Moody-Adams (1994) identifies, what is wrong with blaming culture is that such blame ignores the various ways in which "cultural conventions are modified, reshaped and sometimes radically revised in individual action."²⁴⁵ In other words, a 'culture' cannot exist independently of individual agents, as they are active interpreters of culturally prescribed norms and practices. Thus, while men cannot be blamed for being born into a patriarchal social order, they can be considered complicit for their actions that maintain it. While an individual's moral perception may be corrupted by a variety of factors such as their background, experience and own pragmatic self-interest, one's culture does not fully determine how they think and act, and therefore cannot absolve the responsibility of actors for their wrongful behaviour within assigned social roles on an individual or collective level.

While culture does not wholly determine action, there are real barriers to men's involvement in ending rape and kindred phenomena.. Most men do not regard other men's violence against women as something that they should do something about. If they are not physically violent themselves, they do not see it as being their problem. In May and Strikwerda's (1998) view,²⁴⁶ the fact that the vast majority of men do little to actively oppose rape makes them complicit with the perpetration of rape. An assessment of forward-looking collective moral responsibility therefore requires an acknowledgement of the various sources that constitute serious impediments to men's moral agency. It is clear that institutions can structure the options of participants and others in ways so that they would never foresee their own complicity in harmful acts. For example, Claudia Card (2010) states that while we may come to see that a slaughterhouse does intolerable harm, what we do as consumers, restaurant

²⁴⁴ *Ibid*, p. 156.

²⁴⁵ Michelle Moody-Adams (1994) 'Culture, Responsibility and Affected Ignorance', p. 306.

²⁴⁶ Larry May and Robert Strikwerda (1998) 'Rape and Collective Responsibility', pp. 79-97.

workers, reporters or teachers is framed as being remote from that harm.²⁴⁷ In exploring how specific discourses produce particular understandings of rape and acts of men's violence towards women more broadly, this section exposes the institutional conditions that allow men to believe that this issue is irrelevant to them, beyond their individual control or not worth intervening.

Men's Violence against women is a 'women's issue'

Generally speaking, efforts to prevent men's violence against women have garnered much more support from women than men. It is as if men and women have been on a tandem bicycle, but it has mostly been women who have been doing all the pedalling. In understanding why this is, the widespread assumption that rape and sexual harassment are 'women's issues' can be seen to function as a significant barrier to men's involvement in ending violence against women by rendering men invisible from discourses that are primarily about them. In doing so, this process exposes one of the key characteristics of power and privilege: the ability to go unexamined.²⁴⁸

There are two main ways in which framing men's violence against women as a "women's issue" culturally inoculates men. Firstly, there is a general level of social discourse that shifts individual moral perceptions on issues of men's violence against women. As discussed in Chapter 1 and 2, there is an exclusive fixation on policing women's behaviour and appearance in order to try and avoid, not prevent, men's violence against women. This is problematic, as this focus makes women responsible for their own conduct and partly responsible for the actions of a potential perpetrator. Discussing men's violence against women in this way absolves men of responsibility and instead, blames women for provoking it. This is significant as it means that the primary perpetrators of these crimes are rarely ever challenged to think about their position as men in relation to the prevalence of rape.

²⁴⁷ Claudia Card (2010) 'Complicity in Structural Evils', in *Confronting Evils: Terrorism, Torture and Genocide*, (Cambridge: Cambridge University Press), p. 64.

²⁴⁸ Jackson Katz (2012) 'Violence against Women – It's a men's issue', *TED*, November 2012, (Online) Available: https://www.ted.com/talks/jackson_katz_violence_against_women_it_s_a_men_s_issue, Accessed: 10/06/16.

Secondly, organisations, projects and campaigns dedicated to ending men's violence against women are primarily made up of women. In many respects, this is justified. Female victims who have been violated or abused by men reveal that they feel more comfortable in women-only spaces. Additionally, research has found that women working within women's support services are sceptical about men wanting to get involved in the fear that their participation runs the risk of jeopardising resources and funding directed at women, or that they will "take over".²⁴⁹ On the other hand, some women recognise that while not *all* women's projects have to involve men, they acknowledge that men's involvement is both strategic and necessary in the belief that they can contribute as influential agents of change. In light of these views, it is clear that men's position as allies remains tenuous. With a pre-existing ambivalence about men's involvement, lack of male-role models in this field and a general level of social discourse that fixates exclusively on the responsibility of women, it is unsurprising that most men are complacent with issues relating to the prevalence of men's violence against women.

Rape is only committed by bad or mad men

Most men do not consider themselves as participants in the institution of rape. Instead, men are encouraged to believe that acts of violence against women belong to deviant and deranged men, or innocent men who have been falsely accused. In this view, while acts of violence against women are primarily committed by men, perpetrators of these crimes are portrayed as being *fundamentally different* to other men in society. However, the sheer prevalence of violence against women around the world cannot be explained through individual abnormalities alone. As Michael Kimmel (2008) questions, "how can such a pervasive event be the work of a few lunatics?"²⁵⁰ Although it may be comforting for all of us to believe that only 'sick' or 'insane' people could commit such morally reprehensive acts, historical acts of institutional wrongdoing clearly

²⁴⁹ Tracy Castelino (2012) 'A feminist audit of men's engagement in the elimination of violence against women'. Paper presented at the No to Violence Conference, Melbourne, November.

²⁵⁰ Michael Kimmel (2008) 'The Gender of Violence', *The Gendered Society*, 3rd edition (New York: Oxford University Press) p. 329.

demonstrate that seemingly ordinary, responsible and decent people also have the capacity to inflict harm on others.

The Stanford Prison Experiment conducted in 1971 by Philip Zimbardo offers a morally relevant example of the capacity for 'normal' individuals to act in cruel and harmful ways to others. Described as "normal healthy male college students", twenty-four men were divided into roles of a prisoner or guard and put into a prison-like environment located in the basement of the Psychology Department at Stanford University.²⁵¹ The study was designed to last two weeks but had to be terminated after only six days. Zimbardo (1971) reported to Congressional Hearings two months later that the reason for the premature termination of the mock prison experiment was because the 'guards' voluntarily descended into barbarity:

At the end of only six days we had to close down our mock prison because what we saw was frightening... in less than a week, the experience of imprisonment undid (temporarily) a lifetime of learning; human values were suspended, self-concepts were challenged, and the ugliest, most base, pathological side of human nature surfaced. We were horrified because we saw some boys ('guards') treat other boys as if they were despicable animals, taking pleasure in cruelty, while other boys ('prisoners') became servile, dehumanised robots.²⁵²

Later described by Zimbardo (2007) as the "Lucifer Effect",²⁵³ Zimbardo demonstrated that the potential for people to support and engage in morally abhorrent acts is not a consequence of straightforward pathological dispositions. This famous experiment is significant because it demonstrates that the capacity to inflict harm on others is not limited to people who we consider to be deviant, mentally ill or psychologically disturbed.

²⁵¹ S. Alexander Haslam and Stephen Reicher (2012) 'Tyranny: Revisiting Zimbardo's Stanford Prison Experiment', in Joanne R. Smith and S Alexander Haslam's (eds.) *Social Psychology: Revisiting the Classical Studies*, (London: Sage Publications), p. 126.

²⁵² Philip Zimbardo (1971) in S. Alexander Haslam and Stephen Reicher (2012) 'Tyranny: Revisiting Zimbardo's Stanford Prison Experiment', in Joanne R. Smith and S Alexander Haslam's (eds.) *Social Psychology: Revisiting the Classical Studies*, (London: Sage Publications), p. 128.

²⁵³ Philip Zimbardo (2007) 'The Psychology of Evil', *The Lucifer Effect: How Good People Turn Evil*, (USA: Ebury Publishing), p. 5.

In the context of ordinary men's capacity to commit rape, the history of rape in war undermines popular socio-cultural explanations of sexual offenders as constituting "a unique clinical or psychopathological type".²⁵⁴ For example, May and Strikwerda (1998) note that during the first few months of the Bosnian war, it is estimated that approximately 30,000 to 50,000 women were raped by Serbian soldiers.²⁵⁵ In an everyday context, claims of violence against women belonging to 'normal' men have been met with significant backlash by men who counter-argue that feminists have painted an unduly negative account in labelling *all* men as "essentially bad".²⁵⁶ However, these men are 'normal' in the sense that they are acting largely in accordance with the dominant gender norms and values which they have been socialised into. In other words, there is a connection to how macro-level powers, such as the patriarchy, contributes to micro-level manifestations of everyday violence against women. This claim is supported by a wide variety of studies which have found that men's adherence to sexist and patriarchal values are an important predictor in violence against women.²⁵⁷ If we expand notions of violence beyond severe physical force and obvious forms of sexual abuse, it becomes clear how many men are implicated in social norms and practices that *facilitate, excuse and downplay* violence against women. Firstly, men may facilitate this violence by saying nothing when a friend makes a derogatory comment about women, by turning a blind eye when a friend is treating his girlfriend in coercive and controlling ways or engaging in forms of street harassment. Secondly, men may hold attitudes that excuse or justify violence by saying "she wanted it" or "oh, he or she was just drunk".²⁵⁸ Lastly, men downplay this violence by disassociating and detaching themselves from the issue. When taken individually, these actions may appear inconsequential. However, the rules of social structures can collide in unforeseen ways with other rules and give rise to serious moral wrongs. In attributing the prevalence of violence against women to mad or bad men we render the collective actions of 'normal' men invisible and mistakenly accept

²⁵⁴ Claudia Card (1991) 'Rape as a Terrorist Institution', p. 305.

²⁵⁵ Larry May and Robert Strikwerda (1998) 'Rape and Collective Responsibility', p. 83.

²⁵⁶ Flood (2003) 'Struggles for Gender Justice: The Case of Anti-Violence Activism', in Michael Kimmel, Jeff Hearn and R.W Connell's (eds.) *The Handbook of Studies on Men and Masculinities*, (Thousand Oaks: Sage Publications).

²⁵⁷ Michael Flood (2005) 'Changing Men: Best Practice in Sexual Violence Education', in *Women against Violence*, No. 18, p. 26.

²⁵⁸ Michael Flood (2016) Information Interview, Friday 29th July 2016 [Appendix: Document 4].

that there are a minority of deviant or psychologically disturbed men causing widespread harm instead of asking *why* this is a real problem in our society.

The social cost of men's engagement

Lastly, a source of men's inaction may be a result of motivated ignorance. Efforts to involve men in violence prevention must acknowledge why men may be unwilling to engage with this issue out of self-interest. Indeed, there are real *costs* to men in undermining the patriarchal privileges that underpin this violence. Literature on men's collective moral responsibility for violence against women has been overly enthusiastic in emphasising the positive elements, while simultaneously minimising the resistance that men have in relinquishing their privilege and acknowledging their complicity in the reproduction of violent supportive attitudes.²⁵⁹ Intuitively, men's involvement in the anti-violence movement is presumably working against their own interests in mobilising around the goal of eliminating male power and privilege. For the same reason high earning individuals are less likely to support a political party who vow to increase income tax – people rationally make these choices because the outcomes directly serve their own self-interests. While it would be easy to condemn men for their silence as a form of complicity, in order for agents to be genuinely motivated by claims of responsibility, we must first understand and acknowledge their position more clearly.

Refusing to be a bystander is no easy task. Affronts to dominant masculinities require changing norms in male groups that are often used for male bonding experiences and involve challenging aspects of masculinity that men may deem fundamental to their identity. May (1998) starts his chapter on rape and collective responsibility by reflecting on how both he and his male peers would draw “strength and camaraderie” in talking about their sexual exploits and

²⁵⁹ For example, although Larry May and Robert Strikwerda's (1998) widely cited chapter on rape and collective responsibility considers the socio-cultural barriers to men's collective responsibility surrounding definitions of the rapist ('The Rapist as a Loner or Demon', 'The Rapist as a Victim of Biology' and 'The Rapist as a Group Member'), they fail to consider why men themselves may be unwilling to engage with this issue and hostile to claims of collective responsibility.

yelling obscenities at women on the street as they drove by.²⁶⁰ Men and boys may therefore risk losing status among their male peers by speaking and acting out against sexist and harassing ways. For example, Bill Patrick (2010) reflects on the time at University when he had “Bill Patrick sucks cock” spray-painted on the wall outside his room in retaliation for his pro-feminist activism on campus.²⁶¹ Similarly, in response to one of Michael Flood’s online articles on a pro-feminist website, one man sent an email declaring that he was a “fucking faggot, feminazi pussy licker.”²⁶² Such responses demonstrate how men’s public challenge to hegemonic masculine norms attract ridicule, contempt, and anger.

How then, do we provide men with reasons to avoid and repair collective harms to women? As established in Chapter 2, the existence and prevalence of men’s violence against women threatens women’s full participation in public life as equal citizens. It harms women’s physical and emotional health, restricts their sexual and reproductive choices, their autonomy, self-esteem, mobility and safety. Despite the challenges that men may face, the social sacrifice of status among male peers appears minimal in comparison to the harms that women collectively bear. Peter Singer’s (1972) widely cited example of our moral duty to help a child drowning in a pond reflects this point. Say that you are walking past a shallow pond and see a child drowning in it, you ought to intervene if it comes at no significant cost (such as your own life). While intervening may result in getting your clothes muddy or shoes ruined, these consequences are insignificant in comparison to the death of a child.²⁶³ This example highlights that if it is within our power to prevent something bad from happening, without sacrificing anything of comparable moral significance, we have a moral responsibility to do it. To name a few appropriate actions, refusing to be a bystander, practicing good consent, and engaging in activist communities all

²⁶⁰ Larry May and Robert Strikwerda (1998) ‘Rape and Collective Responsibility’, p. 79.

²⁶¹ Bill Patrick (2010) ‘You must be gay: on the bullying of pro-feminist men’, XY, October 2010 (Online) Available: <http://www.xyonline.net/content/%E2%80%9CYou-must-be-gay%E2%80%9D-bullying-pro-feminist-men>, Accessed: 10/04/17.

²⁶² Michael Flood (2003) ‘Struggles for Gender Justice: The Case of Anti-Violence Activism’, in Michael Kimmel, Jeff Hearn and R.W Connell’s (eds.) *The Handbook of Studies on Men and Masculinities*, (Thousand Oaks: Sage Publications), p. 464.

²⁶³ Peter Singer (1972) ‘Famine, Affluence and Morality’, *Philosophy and Public Affairs*, Vol. 1, No. 1, Spring 1972, p. 231.

come at a less significant cost. It would then appear reasonable to suggest that men have a moral duty to prevent the harms that burden women's lives.

However, considering that men continue to fail to address and understand men's violence against women as a *men's issue*, it is clear that mere moral argument is not enough. Claims that men's privileges are unjust, unearned or that it is simply unfair to women all do very little to prompt collective action. In many ways, self-sacrificing altruism is an insufficient basis for engaging men in the movement to reduce the prevalence of men's violence against women. Although highly controversial, we have to be able to demonstrate how this change is also *good* for men. I attended a workshop last year that discussed the role of men in the theory and practice of feminism.²⁶⁴ During one of the seminars on engaging men, one man said that we need to be able to appeal to men's concerns for their children,²⁶⁵ personal health, and relationships with the women in their lives if we expect their participation on gender-related issues. The majority of the women in the group appeared noticeably annoyed by this claim, and stated that men's involvement has to come from a broader ethical and political commitment to gender equality, not an enlightened self-interest. However, I believe his claim has some pragmatic merit. Although it is disappointing that we may need to personalise the issue to engage men to give up the unfair privileges that they hold, we have to at least get men through the door. The opportunity for men to profess and act on a broader ethical and political commitment to gender inequality can then come later. There is a cost to men's engagement that must be acknowledged, and while this might appear justifiably insignificant to women, we need to accept that it is likely to appear significant to men.

While most men abhor rape and show sympathy for victims of sexual violence, part two of this chapter has demonstrated how a general level of social discourse shapes men's moral perceptions of men's violence against women.

²⁶⁴ 'Exploring the 'Man' Question, Again: A Feminist Perspective, University of Exeter, Wednesday 1st June 2016.

²⁶⁵ For example, these appeals may involve questions like "what kind of future and world do you want for *your* daughter?"

As the dominant group who currently reap the benefits of this social order, and in turn, violence against women, this section also acknowledged that men might pragmatically turn down opportunities to engage with the issue due to their own motivated ignorance. As Susan Griffin (1977) asserts “rape is not an isolated act that can be rooted out from patriarchy without ending patriarchy itself.”²⁶⁶ Eradicating the harmful institutional conditions that give rise to men’s violence against women should have enough altruistic appeal to motivate all. However, the lack of progress so far suggests that this approach is too idealistic. Consequently, building momentum by appealing to the personal benefits that men may gain should be considered. This point has important implications for prevention work as it demonstrates that if we want to engage men, we have to do more than explain how the prevalence of men’s violence against women in society harms women – we have to show how this revolutionary change will be *good* for men. Lastly, the third and final part of this chapter will reflect on theoretical and practical considerations of men’s engagement in activist communities and conclude that ascribing forward-looking collective moral responsibility holds hopeful and optimistic prospects in ending men’s violence against women.

Part Three

Grounds for cautious optimism

Efforts to engage men in preventing men’s violence against women are gaining momentum all around the world. Since the 1970s, the scholarly project of making gender visible to men has considered appropriate primary prevention strategies to change the social norms, gender roles and power relations that feed into men’s violence against women.²⁶⁷ As a result, increasing numbers of men are taking part in efforts to end violence against women. Men are

²⁶⁶ Susan Griffin (1971) ‘Rape: The All-American Crime’, *Ramparts Magazine*, p.35 (Online) Available: <http://www.unz.org/Pub/Ramparts-1971sep-00026>, Accessed: 12/03/16.

²⁶⁷ Michael Flood (2011) ‘Engaging Men in Efforts to End Violence against Women’, *Men and Masculinities*, Vol. 14, No. 3, pp. 358-359.

becoming involved as audiences for social marketing, participants in education programs, activists and advocates, community leaders, and policy makers.²⁶⁸

The best known example of an organisation that promotes men's collective moral responsibility for violence against women in practice is the White Ribbon Campaign. Founded in 1991 in response to the Montreal Massacre, where a male student murdered fourteen fellow female students in the claim that "feminism ruined his life",²⁶⁹ a group of men from Toronto formed the organisation to highlight the positive role that men can play in ending violence against women. As the world's largest movement of men and boys working together to end violence against women, promote gender equality, healthy relationships and a new version of masculinity, the White Ribbon Campaign focuses on primary prevention – stopping violence before it occurs by challenging the deeply engrained attitudes, social norms and power inequalities that give rise to men's violence against women and gender inequality.²⁷⁰ In recognising that change is unlikely to stem from men simply being critically self-reflective of their beliefs, values and practices, White Ribbon have made systemic efforts in lobbying governments to make the rights of all women a policy priority, calling for better sex and healthy relationship education in schools, greater media accountability in reporting men's violence against women, and providing workplace accreditation incentives for traditionally male-dominated organisations to take up the cause of preventing and reducing men's violence against women.²⁷¹

Alongside these notable achievements, there are also real challenges and controversies in this work. For a sustainable, self-transformative and politically

²⁶⁸ *Ibid*, p. 358.

²⁶⁹ Julie Bindel (2012) 'The Montreal Massacre: Canada's Feminists Remember', 3rd December 2012, The Guardian (Online) Available: <https://www.theguardian.com/world/2012/dec/03/montreal-massacre-canadas-feminists-remember>, Accessed: 21/04/17.

²⁷⁰ White Ribbon Australia (2017) 'FAQS', (Online) Available: https://www.whiteribbon.org.au/wp-content/uploads/2016/11/FAQs-WRD-2016_FINAL..pdf, Accessed: 22/04/17.

²⁷¹ White Ribbon Australia (2017) 'What White Ribbon Does', (Online) Available: <https://www.whiteribbon.org.au/stop-violence-against-women/what-white-ribbon-does/>, Accessed: 22/04/17.

engaged way of life, men must find constructive ways to act sceptically towards themselves and others. Efforts to engage men have therefore had to balance the assertion that all men are complicit and collectively morally responsible for violence against women while reconciling with the fact that this does not mean to imply that all men should feel guilty for their role in maintaining and reproducing systems of oppression. In trying to encourage men's involvement, activists and organisations have attempted to uphold men's desires to feel good about being men by framing men's violence against women as a problem with dominant constructions of masculinity, not men themselves. Instead of abandoning hegemonic traits associated with masculinity such as toughness, strength, power, dominance and so on, recent campaigns have sought to redefine and reshape what it means to be a man in a way that is beneficial to both men and women.

A clear illustration of this approach is evident in the widely popular 'My Strength' campaign. In 2002, the US-based organisation 'Men Can Stop Rape' released a poster series titled 'My strength is not for hurting'.²⁷² The images in the campaign posters depict men who look traditionally 'masculine' in their appearance with captions stating: "My strength is not for hurting, so when she said no, I said OK", "My strength is not for hurting, so when I wasn't sure how she felt, I asked", and "My strength is not for hurting, so when she was drunk, I backed off".²⁷³ The campaign draws upon dominant masculine ideals to expand the meaning beyond physical strength to include an inner *moral strength*. In other words, they attempt to raise the bar for what it means to be a so-called 'real man'.

This approach has important implications for violence prevention work as separating men from masculinity allows for activists to feel good about their involvement, but also feel like *men* in doing so. As highlighted earlier in the responses to Michael Flood and Bill Patrick's involvement in pro-feminist work,

²⁷² Men Can Stop Rape (2017) 'A Comprehensive Approach – The Strength Campaign' (Online) Available: <https://www.mencanstoprape.org/A-Comprehensive-Approach-The-Strength-Campaign/>, Accessed: 17/02/17.

²⁷³ Please see Appendix [Document 1]

a common tactic employed by other men is to undermine the masculinity of anti-violence male activists by labelling them as “wimps and sissies, gays or traitors.”²⁷⁴ Katz (2006) calls this the ‘macho paradox’, where men who engage in anti-violence work have their manhood called into question, yet in his view, it takes more courage and strength to stand up against a dominant group and fight against injustice.²⁷⁵ This strategy demonstrates that it is possible for men to be critically self-reflexive with a way of calling out other men, without abandoning their own sense of identity in the process.²⁷⁶

While engaging men in activist communities is important, there is also a real danger in speaking to their concerns, interests and problems.²⁷⁷ Flood (2003) states that men’s collective and pro-feminist mobilisation on issues of violence against women is a “delicate form of political activity”²⁷⁸. Indeed, it is a particularly delicate activity because it involves the mobilisation of members of a privileged group in order to undermine that very same privilege. Research based on qualitative interviews indicates that women are concerned that men’s involvement in violence prevention will reduce funding for women’s services, dilute feminist messages and marginalise women’s voices.²⁷⁹ For example, Tracy Castellino (2010) found that when men are involved in prevention work, women speak differently about the issue in fear that they will offend men,

²⁷⁴ Meg Luxton (1993) ‘Dreams and Dilemmas: Feminist Musings on ‘The Man Question’, in Tony Haddad’s (eds.) *Men and Masculinities: A Critical Anthology* (Toronto: Canadian Scholars’ Press), p. 360.

²⁷⁵ Jackson Katz (2006) *The Macho Paradox: Why some men hurt women, and how all men can help*, (Illinois: Sourcebooks Inc.).

²⁷⁶ The importance for men to feel positive about their self-identity in engaging with men’s violence against women has strong parallels with Judith Katz’s (1979) “white awareness training” to promote critical reflection and raise white racial consciousness. In one of her methods for anti-racism training, Katz states: “You should also help the group identify positive aspects of being white. It is important for them to feel good about themselves as white people.” This is significant, as it highlights how “guilt inducing” dominant groups by condemning their social identity functions as a barrier for any proactive movement. See Linda Martin Alcoff (2008) ‘What Should White People Do?’ in Uma Narayan and Sandra Harding’s (eds.) *Decentering the Center: philosophy for a multiculturalist, postcolonial and feminist world* (Indiana World University Press), p. 269.

²⁷⁷ Michael Flood (2015a) ‘Men and Gender Equality’, in Michael Flood and Richard Howson’s *Engaging Men in Building Gender Equality*, (Newcastle Upon Tyne: Cambridge Scholars Publishing), p. 7.

²⁷⁸ Michael Flood (2013) ‘Men’s Collective Struggles for Gender Justice: The Case of Anti-Violence Activism’ in Michael Kimmel, Jeff Hearn and R.W Connell’s (eds.) *The Handbook of Studies on Men and Masculinities* (Thousand Oaks: Sage Publications), p. 458.

²⁷⁹ Michael Flood (2015b) Work with men to end violence against women: a critical stocktake, *Culture, Health and Sexuality*, Vol. 17, no. 2, p. 161.

resulting in less honest and open dialogues on pertinent issues.²⁸⁰ This is significant, as it has made *some* organisations hesitant to share a realm which has historically been a place of sanctuary for women.

Men's engagement in organisations and projects relating to ending violence against women is also shaped by patriarchal privilege. Kristen Macomber (2012) found that there is a "glass escalator" effect for men working in women-orientated projects. Despite their minority status within women's organisations, men are often glorified as the "good guys" and given greater power and recognition than women who are doing similar work.²⁸¹ As a result of their heightened status in the field, Kimmel (2015) humorously highlights that some men see addressing gender equality as something akin to the cavalry: "thanks very much for bringing this to our attention ladies, but we'll take it from here."²⁸² This is problematic, as it reinforces the same systems of power and oppression within organisations and projects dedicated to eliminating them.

Despite these legitimate challenges and concerns, engaging men to be positive partners in violence prevention can be seen as a promising catalyst for social change. While both men and women bear a shared responsibility for the institution of rape, it is men as a collective who hold the most power and privilege, meaning that they are best socially positioned to act against and transform this systemic injustice. In accordance with Pettit's (2007) view, whether or not you are fundamentally convinced by the claim that men share a collective moral responsibility for rape, it is difficult to deny the positive potential this reclassification could have. Reconsidering the responsibility for rape as a collective moral responsibility draws attention to how men and women's values, beliefs and actions belong to larger institutional systems that distribute harms and benefits inequitably; a process that is inevitably missed when the

²⁸⁰ Tracy Castelino (2012) 'A feminist audit of men's engagement in the elimination of violence against women'. Paper presented at the No to Violence Conference, Melbourne, November

²⁸¹ Kristen C. Macomber (2012) 'The Glorification of Male Activists', *Men as Allies: Mobilizing Men to End Violence Against Women*, A PhD dissertation submitted to the Graduate Faculty of North Carolina State University, p. 70 (Online) Available:

<http://gradworks.umi.com/35/38/3538291.html>, Accessed: 11/04/17.

²⁸² Michael Kimmel (2015) 'Why Gender Equality is Good for Everyone – Including Men', *TED talks*, (Online) Available: <https://www.youtube.com/watch?v=7n9IOH0NvyY> [6:04]

prevalence of rape is only considered to be the responsibility of individual perpetrators.

The claim that men share a forward-looking collective moral responsibility for rape is an optimistic view. If we understand rape as an act that is inextricably linked to a masculine identity that is socially and institutionally formed, there are good reasons to believe that the social conditions which shape individual attitudes and learned behaviours can be reformed. While this prospect may seem inconceivable at the moment, it is important to remember that it also now seems inconceivable that women were once not allowed the right to vote and that rape in marriage was legal until 1991. Although cultural change is slow, it does happen. The existence of organisations like the White Ribbon Campaign and Men Can Stop Rape demonstrate that there are grounds for cautious optimism in providing examples of what men's collective moral responsibility for violence against women looks like in practice.

In imagining new possibilities for positive social change, we need to rethink institutional settings and what it would mean for individual moral agents to position themselves in relation to institutional injustices. Despite the primacy of individual moral responsibility in Western conceptions of morality, there are many urgent issues that require collective and concerted action, such as climate change, global poverty, refugee crises and racial discrimination. This chapter has provided a basis to understand what it would mean to think carefully about the question of forward-looking collective moral responsibility.

Conclusion

Rape is preventable, not inevitable. Rape as an act of institutional wrongdoing is the idea that men's violence against women is a social practice perpetrated directly by individual offenders and perpetuated indirectly by normal, everyday men in normal, everyday circumstances. If we do not understand men's violence against women beyond the level of the individual, we will continue to misdiagnose the problem and thus misprescribe the cure. We will fail to understand the true character of rape, we will fail to address its real causes and foundations, and we will fail in our efforts to reduce and prevent its prevalence.

In Chapter 1, I demonstrated how the capacity of the law and law enforcement agencies are significantly limited in their capacity to address and combat rape. Rape is a complex social problem that cannot be solved through legislative reform alone. Instead, a broader approach which recognises the various socio-cultural conditions that make women vulnerable to men's violence is required. This would involve educational and behavioural change strategies targeting the very institutions responsible for producing and maintaining a deeply unequal society; one that does not actively encourage sexual negotiation and mutuality in choice. While the law has a powerful and symbolic role to play, its capacity to successfully prosecute cases of sexual violations will remain extremely limited unless the features of women's continuing inequality are addressed first.

Chapter 2 builds on the need to understand the broader context in which rape occurs. In outlining how philosophers have approached the question of why rape is wrong, I demonstrate the seemingly obvious point that *why* we think rape is wrong matters – it determines how we understand the crime and the solutions we devise to combat it. Previous attempts to understand the wrongfulness of rape in individualistic terms have fallen short given their failure to capture the moral harm rape does to *all* women. Consequently, this understanding has impacted the measures we take as a society to address rape; practical measures have focused on addressing individual behaviour,

particularly women's avoidance of rape through gender policing, instead of addressing the harmful collective behaviour of men.

If a dimension of the wrongfulness of rape lies in the harmful collective behaviour of men, what responsibility do men then have as a collective to address it? Chapter 3 provides a critical assessment of men's collective responsibility for rape and concludes that men have a forward-looking collective moral responsibility. This claim is substantiated by existing movements, such as the White Ribbon Campaign and Men Can Stop Rape who have already taken practical steps in this direction. While cultural change is slow, this chapter concludes by suggesting that there are grounds for cautious optimism in addressing acts of institutional wrongdoing in this way.

In imagining new possibilities for positive social change, we need to rethink institutional settings and what it would mean for individual moral agents to position themselves in relation to institutional injustices. Reconceptualising rape as an act of institutional wrongdoing is therefore philosophically significant as this model provides a practical way to think about combating men's violence against women and accounts for the very fact that rape is both an individual transgression and a practice with institutional implications. As a society, we can do more than merely seek to control and avoid men's violence against women on an individual basis. We can seek to eradicate it.

Appendices

[Document 1] 'My strength is not for hurting' campaign posters²⁸³



²⁸³ Men Can Stop Rape (2017) 'A Comprehensive Approach – The Strength Campaign' (Online) Available: <https://www.mencanstoprape.org/A-Comprehensive-Approach-The-Strength-Campaign/>, Accessed: 17/02/17.

In your keynote address at the White Ribbon Conference in 2013, you stated that men's use of violence is enabled by wider gender inequalities. Can you expand on how everyday attitudes, interpersonal interactions and institutions contribute to men's use of violence against women?

There are three dimensions of gender inequalities that are critical: social norms, social practices and social structures. We did a comprehensive literature review on the ways in which each of those feed into some men's use of violence. Just to give an example of that, there's good evidence that men are much more likely to perpetrate violence against women if they perceive that their peers are supportive or tolerant of violence against women, or are using violence against women themselves. So there is good evidence around male peer support. So that's one way in which one aspect of gender inequalities in this case to do with social norms and particularly men's beliefs or male peer beliefs about gender, masculinity and so on feed into some men's perpetration of violence. So they legitimise violence and lead some men to operate with a false consensus that other men think the same thing that they do.

To take another example, social practices. We know that at a key risk factor for men's use of violence relates to if they are engaged in other forms of coercive and controlling behaviours. And easy way of putting it is let's say that your friend is single, she wants to have a boyfriend and there are one thousand men in the room next door and she wants to figure out which of those thousand men are going to treat her with respect and care and which of those thousand men might be likely to use violence against her. The question I have for you is what information about those men would be useful in predicting which of those men would use violence and which won't. One of the most useful things you could know about them is how they have treated their previous girlfriends. Even if they've never used physical or sexual violence against their previous girlfriends, if they are already invested in various kinds of abusive and dominating behaviour that then can extend itself into violence in various sorts of ways. Maybe a slightly more sophisticated example that is less directly tied to individual perpetration is if men are involved in a set of social relations that involve power over women, where they routinely experience women as second class citizens, men as more important and so on, then that too can reinforce and condone their perpetration of violence.

I've talked briefly about social norms and social practice, now the last one is social structures and again there is good evidence that if there are structural gender inequalities to do with for example economic decision-making, political power or to do with women and men's access to public life, again they can feed into men's use of violence against women. This one is complex though, and you

may know this, because there is debate over between structural gender inequalities and men's violence against women, there is some evidence for example that where you get countries moving towards gender inequality and becoming more progressive, you sometimes see an increase in violence against women. And this seems counterintuitive. You would think that as we get more gender equality, men's violence against women would decline, and in general it does, but there is also evidence of a backlash dynamic where some men resist that progress towards equality and one of the ways they resist that is through the use of violence.

Which countries in particular has research shown to have this sort of backlash?

Predominantly countries in the Global South. Qualitative research among men also demonstrates that there is a backlash because they find that they don't know what their role is as a man anymore. They feel uncomfortable with women's growing economic power or power in households, and they try to reassert that power.

In focusing on the social and structural foundations of this violence, do you believe that this has any role in diminishing the culpability of perpetrators who commit acts of sexual violence?

I think there are some really difficult political issues here. As you probably know, feminists and others have worked for several decades to make two kinds of arguments. I'm not speaking out of a fluent grasp on the scholarship here, I'm sure there are particular feminist writers who have written a lot more on this than I've thought about it, but off the top of my head I think there is a different political challenge. On one hand, we want make the argument that individual men who use violence are personally responsible in a profound and fundamental sense for the use of violence and that is a reaction in particular against victim blaming – culturally and socially victim blaming has been pervasive in our culture and as a feminist critique of that, I and others argue instead that it's not the victim who is to blame, the responsibility fundamentally rests with the perpetrator. So that has been one key feminist argument and it has achieved some traction. There is data in Australia for example that shows that the proportion of people who believe that men who use violence are responsible for that violence has increased, and the proportion who believe that victims somehow bring violence upon themselves has decreased. So we've got longitudinal data in showing that there has been some success in changing attitudes. So that's one argument. The other argument is that rape and domestic violence are profoundly cultural – they are fundamentally cultural phenomena. The perception of a mad, bad rapist or the mentally ill, or disturbed individual is atypical and deviant, instead frames violence against women as normalised as culturally sanctioned and culturally legitimated. I'm sure you've come across the phrase 'rape culture' and the notion of rape culture builds on that. It builds on the idea that this is a behaviour that is culturally organised and

that in some ways is entirely unsurprising given how we socialise boys and media through media representations in our culture. There are all sorts of ways in which for example rape is constructed as normal sex, violence against women is legitimised or made invisible and so on.

So the notion of men's collective responsibility I think has been less visible in feminist arguments. It is there and you can find it in feminist arguments, and in a sense it follows from key feminists claims. If men's violence against women is the product of structural gendered inequalities (which it is) and if men in general, as a group, are the beneficiaries of these gender inequalities – that is, if men as a group experience privilege, which women as a group experience disadvantage, then in many ways it follows that men have an ethical responsibility to address those gender inequalities. So in other words, a collective responsibility. You see that argument made in appeals to men who don't use violence against women. Because men will say things like "well I treat the women in my life with respect. I don't use violence, what has this got to do with me?" Campaigns such as the White Ribbon Campaign and campaigns elsewhere make the claim that ah yes, but there may be ways in which you condone that violence in failing to speak up on men's use of violence or violence-supportive comments, you allow that violence to occur. In other words, to the extent where you're not part of the salutation, you're part of the problem. But this has been an argument that has been hard to make I think.

Regarding culpability, if we argue that rape and domestic violence are fundamentally cultural and structural, then potentially yeah, it runs the risk of men saying "it wasn't me, I blame society, I'm just a product of my socialisation and that's why I raped her". Now, men typically don't say that. There's good qualitative research among perpetrators who typically say things like "she deserved it" or "I didn't do it" or "it wasn't as bad". Male perpetrators typically minimise and victim-blame and do a series of things, but they don't tend to get all sociological. While it would be interesting if they did, they don't tend to offer a sophisticated social account. But I think there is a risk there. In a sense, I don't think it's a big risk because our behaviour is social in all sorts of ways, where it is a man sexually assaulting a woman, enjoying a nice meal, or watching the footy – all those things are social in all sorts of ways. The mere fact that these behaviours are social I think in no way diminishes men's personal and ethical responsibility to address their own behaviour.

In addressing the social and structural foundations of men's violence against women, I've found that one of the main challenges is moving beyond the public's fixation on labelling an individual perpetrator and instead placing a greater emphasis on all men's collective responsibility to act. What are some of the key barriers you've encountered in appealing to, and engaging men?

The very first one there is that violence against women is a women's issue. Many men have sympathy for the issue of sexual violence, but say "what's it got to do with me?" and so there is very much a sense that they themselves are not perpetrators, it is the crimes of Other (capital 'O' other) so therefore how of this of concern to me? One of the key tasks that I and others face when trying to engage men in violence prevention is how to give men a sense of the role they can play and the responsibilities that they do have to address this issue. There are three dimensions to that. One is that they may be perpetrating violence in various ways that as soon as we expand notions of violence beyond severe physical violence or obvious forms of sexual assault, then many men are involved in those forms of violence and one of the first things men need to do in general is look at our own behaviour and think of the ways that we may coerce, pressure or dominate women in our lives. So that's one appeal to men, but this isn't where I'd start. Trying to get men to think about their own use of violence is hard and makes men hostile to appeals of engagement. We can try to appeal to men through the impact of other men's violence on the women and girls they care about. You see that appeal in campaigns such as He For She for example, but it's limited and vulnerable to the criticism that it's paternalistic. That second part about getting men to think critically about their own behaviour is important, but another piece to this work is getting men to think about how their own everyday behaviour in fact may legitimise, allow or condone other men's use of violence. So that other point I made earlier about saying nothing when a man rapes a rape joke, or turning a blind eye when a mate is treating his girlfriend badly.

So in terms of key barriers just to go back to your question, a key barrier is that violence against women is a problem of Other men. A problem of a tiny minority of men. You might have read literature regarding 'real rape', a feminist critique on a very narrow stereotype of what rape is. That it is sort of the stranger in an overcoat leaping out of the bushes and sexually assaulting a woman unknown to him, using severe physical force resulting in injury and so on. Instead of what is far more typical in sexual assault where it's a man known to the woman, in a setting that's familiar to her, his house, her house, or a car, there aren't any serious physical injuries, no use of weapons and so on. In terms of barriers, the othering of violence against women constitutes a narrow perception and definition of what that violence is, who perpetrates that violence. Obviously another barrier is that men in general often have sexist and violence-supportive attitudes and there is a consistent gender gap. Men in general have worse understandings and attitudes towards violence against women than women. Men tend to define violence against women more narrowly, tend to blame the victim more enthusiastically, tend to subscribe more strongly to rape myths and this is also true for beliefs surrounding gender and sexuality in general. So again, I don't know what the data is like in the UK, but in Australia, there is good data to show that more men than women believe that rape results from men not being able to control their need for sex. So here's a belief that very much takes responsibility away from men. It says he uses violence or rapes women because of an uncontrollable need for sex. Very clear diminishing of personal

responsibility. And men believe that more than women. In fact, there has also been some good research in Australia trying to chunk or thematise certain types of beliefs about women and violence, beliefs that justify violence that it's legitimate to use violence against women if she sleeps with another man, beliefs that justify and beliefs that excuse. In Australia, there is clear evidence of beliefs that excuse violence - Oh he was drunk or she was drunk, or an uncontrollable need for sex, beliefs that justify violence. I'm not sure if that distinction is clear to you, but some of the research has talked about attitudes in terms of different ideas. Attitudes that *justify*, attitudes that *excuse* and thirdly, attitudes that *minimise* violence.

Despite some of the barriers that you've noted, how successful education workshops, anti-sexism campaigns been in altering masculine ideals and learned behaviours that men hold so strongly?

So I've reviewed the published research on efforts to shifts men's attitudes and behaviours and some of that research is largely concerned with face-to-face educational programs often on university campuses or in high school, mostly secondary schools. Much of it comes from North America, but there is also research in the UK, Australia and elsewhere and from outside western countries. What that does show is that if it's done well, and that's a big IF, workshops can shift attitudes and more encouragingly can shift behaviours. For example, healthy relationships or respectful relationship programs among young men, or mixed sexed groups can diminish the attitudes supportive of violence against women and can also lead to lower rates of perpetration by participants in those workshops. Most of these workshops are methodologically pretty poor, but better evaluations ask about attitudes and behaviours, have long term follow ups (3-6 months or further down the track). Certainly there are some evaluations that do show long term and positive impacts on behaviour. Having said that, many programs aren't evaluated and existing evaluations show that programs don't work – they have no impact or a negative impact. So I can send you that write up, but it's kind of incontestable these days that if you do educational programs well you can make a positive difference.

What's the demographic of these groups? Is it targeted towards offenders, or is it mostly targeted towards 'ordinary' men?

What I was talking about then was mostly primary prevention work. So work that isn't targeted towards offenders but aimed at general populations, first year students of universities or groups of students in classes at school. All of the boys in year 10 go through an education program, or 200 university students in a particular psychology course go through a healthy relationships program. In other words, they're not being recruited on the basis of their perpetration or victimisation. These are general primary prevention programs. They do of course include perpetrators and victims, because of course there are perpetrators and victims in general populations but what I've described is a different body of work from the work with perpetrators and again, as you know,

there is a body of scholarship on work with particularly men who use domestic violence against women and men who've used sexual assault against women and it also shows some evidence of effectiveness, but it's much more mixed in fact. The research on perpetrator programs is quite uneven and it shows that these programs are in fact ineffective for particular groups of men – men who have longer histories of violence or greater involvement with violence or men who are involved in not only involved in violence against women, but greater criminal activity – they're selling meth and betting up people at the park and so on. So the evidence on perpetrator programs is mixed.

In what ways are women also collaborators in rape culture?

I think it would be fundamentally dangerous to imply equal responsibility. Certainly people do argue that, but I think it would be fundamentally dangerous politically because it would take away too much from the point that it's the perpetrators of violence and the beneficiaries of inequality that structure that violence that have the greatest ethical responsibility to address that violence. So when it comes to men's violence against women for example, because obviously there are other forms of interpersonal violence we might want to address, including men's violence against men, but when it comes to men's violence against women, and most rape and sexual assault is men's violence against women, then I think above all it is men who have that collective, ethical responsibility. However, there are clearly ways in which women too are socialised into rape culture. Women too take on a set of ideas about sexuality and gender that increase the likelihood of their own victimisation. Women may experience things that fit the legal definition of sexual assault, where they are unable to consent or in fact didn't consent but in fact may not name that as rape. And they don't name that as rape precisely because of a rape culture where there is a very narrow definition of rape and one that blames women for the sexual assault and victimisation that they experience. Men may do this too. Men may come home and thought they've had sex, as far as they're concerned it was a great or nice night of sex. But that woman was at home thinking what a horrible experience she had. I think there are some ways to put it bluntly in which we teach men to be rapists – We teach men not to take women's no for an answer, to interpret women's talk or touch in sexual ways, to see women as perpetually sexually available, to ignore women's signs of disinterest, to push past women's resistance, we teach men to be rapists in all sorts of ways. The problem of seeing rape as sex is more of a problem for men than women in that if you like, the proportion of sexual acts between men and women where the woman thought it was sex but it was rape is much smaller than when the man thought it was sex when it was in fact rape.

I'd be very careful about the idea of women having a shared responsibility as collaborators in a rape culture. But certainly part of the work that needs doing is working with women, and that has been a lot of the work that has been done up until relatively recently. It was about teaching women to stay safe, carrying their

keys in their hand so they can stab an attacker and so on. There's an obvious kind of victim blaming that has been part of existing efforts. It's still very important to work with girls and women and I see value in self-defence training. But not self-defence training that focuses on stranger danger, or leaves women feeling responsible, but empowers women in a rape culture.

From your experience in an Australian context, what has been done to address systemic failings in State and non-State institutions?

So I worked briefly with the Australian defence force, and was commissioned to write a curriculum on healthy relationships. Essentially, it was sexual consent 101 and this was after a series of alleged sexual assaults by young men in the military and I had similar experiences working with the AFL and NFL after alleged sexual assaults by players. I know that there has been a massive effort in institutional change in the wake of these scandals that was pushed by the Human Rights Commission to make a culture change, to shift formal and informal norms, to have good processes for reporting unacceptable behaviour and so on. This is well documented. But to answer your question more generally, there is an extraordinary amount of momentum in Australia at the moment, in terms of addressing and preventing violence against women. There's a national plan of action that began under the previous Labour government, and continues under the contemporary Coalition government. At a national level, there's momentum to craft multilevel and comprehensive plans to reduce the prevalence of violence against women. There is an extraordinary amount of policy and community attention to violence against women in Australia. I've been in this field for twenty-five years and it is historically new. There are some very valuable initiatives that are doing what you're describing here. For example, there have been some reforms in relation to protection orders and domestic violence orders. So if a woman is living with an abusive male partner, she can take out what is called a protection order or an apprehended violence order, they have various kinds of names, and essentially that order does things like prohibiting him from coming within 200 metres of her. Basically, he has to stay away and the police will respond very quickly if someone who has a protection order rings them or makes a complaint. It's basically a set of protections for victims of violence and one recent reform is that these protections now work across state boundaries. It used to be the case that let's say you were assaulted by your male partner in one part of the UK and you take out a protection order there, and then you move to another part of the UK or you're on holiday and the protection order no longer exists so he can come and sit next to you at a café and harass you or whatever. So that's just one small example of a series of reforms in Australia. On the one hand, there's a positive story I can tell about state and non-state institutions responding to violence. It has been focused particularly on secondary and tertiary intervention, on responding to victims or survivors and holding perpetrators accountable. There has been less work to do with primary prevention in terms of shifting social norms and gender inequalities. Anyway, having told you the positive story, there are also ways in which the Federal and State Governments also have been acting in regressive or negative ways. For example, the Federal

Government stripped funding recently from community legal centres. Now, community legal centres are one of the first places that women fleeing sexual or domestic violence go to. They seek cheap or free services and assistance. Now they are far less able to do so because community legal centres have been stripped of funding. So I just want to make the point that there isn't an incredibly good thing going on.

I've been writing a section of my thesis on consent, and I saw that you posted on your website the tea and consent video that has been hugely popular here. Do you think that a focus on consent education is one of the most effective strategies to prevent and combat rape?

In terms of consent, there are multiple strategies that are relevant and again I don't think I've thought about this very systematically. But it is certainly one important strategy to teach people about consent, to teach them what consent is and what consent looks like. This does have real political value and change-making value given the narrow and problematic ways our culture constructs consent, when consent is the absence of resistance. One problem is that consent is very widely understood as the mere absence of resistance, so men to take a stereotypical example, men think that they have consent from women because the woman is not pushing them off, actively saying no or screaming at them. So I think there is political value in trying to re shape basic norms of consent and construct a positive norm, where consent is not the absence of resistance, but the kind of explicit agreement to every single sexual activity that is taking place, rather than we've agreed to kiss and therefore agreed to have every other sexual activity imaginable. There is some really valuable work that the tea and consent video and other campaigns do in terms of redefining our understandings of what consent is and what consent looks like.

However, the second piece of that work and what you pick up on, is that we also have to highlight the value of consent and necessity for consent. Some, many? Let's say some men don't give a shit. They don't care whether a woman consents or not. So in a sense, this won't change their behaviour radically because they're invested in coercive norms of sexuality in general so they're willing to push past, ignore and actively violate women's consent. So expanding definitions of consent won't make a difference there. Part of this work has to look at tackling men's sense of sexual entitlement, there's good feminist literature on this, but sexual entitlement refers to men's sense that they have a right of access to women's bodies. A right in terms of what women should do for them. There are all sorts of ways we socialise that into boys and men, explicitly in relation to sexuality in terms of privileging men's sexual pleasure, privileging men's sexual desires, the routine portrayal of women as only sexually available or sexual objects and so on. Then there's way we socialise men into entitlement more broadly, that through structural gender inequalities and gender norms. For example, I as a man learn that my voice is more important than a woman's voice and what I say matters more. We socialise men that they can take up

space on a subway, they can spread their legs over three seats. We socialise men literally to take up space, in public, in meetings, through their voice, bodies in meetings on the street and so on. So there are all sorts of ways I think we have to address patriarchal entitlement.

I completely agree that consent education does of course have value and I'm not wholly critical of it. However, it seems that portraying consent as a simple 'yes' or 'no' is more applicable to stranger rape cases where it is very obvious when there is a lack of consent. Given that the majority of rape victim's know their perpetrator, I think it's important to highlight that there are in fact 'gray areas'.

It's interesting that you mention a gray area, there is good feminist scholarship on consent that I've read some of, I think there's both insight and danger in the notion of a gray area. So where I've sometimes heard the term gray area is in anti-feminist resistance to the idea that consent should be important in people's sexual relations. In Australia, there have been commentators who have used this to say that women should have sex with their partners when they don't want to. Sex for me and my partner may be an important way in which do intimacy and show love for each other, and there might be a night for example where one of us is feeling a bit tired, bit of a headache but we kind of go along and have sex anyway because the other person wants to. This doesn't feel coercive or abusive and there's no sense of profound harm, but if the other person hadn't wanted to, they probably wouldn't have had sex. So I don't think that is the same behaviour as completely coercing your partner into sex. It's not ideal, but I'm far less troubled by it than I am far more obvious forms of sexual coercion. So it depends what you mean by gray area, but certainly, we need to move consent beyond simple notions of a simple yes and no. I can't remember well enough it speaks to any kind of non-verbal forms of consent, or the ways they may negotiate sex in much more subtle ways of yes and no. It's a real limitation of consent campaigns if they focus solely on explicit verbal negotiations. There's some good work by a colleague of mine from New Zealand called Melanie Beres, I'll send this to you as well, about that, and about the ways that young people negotiate consent. She finds that the vast majority of young people don't negotiate consent through explicit statements of yes or no, but negotiate it in other subtle and sensitive ways. Some people say ah that's really dangerous. I know I've said to men in workshops to not rely on your perceptions of women's body language, partly because men are socialised to interpret women's touch in more sexualised ways, but there are some ways in which one could imagine a substantive practice of consent that is non-verbal. I'm not so hard lined that I think explicit verbal consent is mandatory in all and every sexual interactions. However, there are ways in which you could make consent sexy, playful and erotic rather than formalised and legal. I see verbal consent as a very good thing. But you have got a valuable point here. Consent by itself doesn't guarantee the ethical desirability of an ethical sexual interaction. In other words, it's not enough. For example, people may consent to things that will in fact harm them. Classic example is someone consents to have unsafe sex with their HIV positive partner. So they risk contracting HIV themselves,

harms to their physical health, but they're consenting. Another example is let's say that a couple consents to have sex in the lounge room in front of their five and six year old children. Some people may think this is fine, but many would say that this is inappropriate and problematic for children to see. So again, there's consent, but it is doing third party harms. The other example I give is the obvious one where people are consenting because of limited alternatives. Because of profoundly low self-esteem and the presence of power inequalities. A substantial sexual ethics needs to go beyond a libertarian ethics of consent. There are various ways in which a simple ethic of consent is not enough to guarantee ethically desirable sex. But it's not a bad place to start. The tea and consent video is a lot better than other campaigns that I've seen which say things like "just say no" or "if you rape, you'll go to jail and get raped yourself"- which is extremely unlikely that they would even end up in jail. Tea and consent looks fantastic in comparison and I think it's a good campaign, but there is other work on consent that also needs doing. Tea and consent teaches what consent is, but there's three other things you need to do: how to do consent, why consent is valuable and other ways to negotiate consent beyond explicit verbal consent.

How would you classify the act of rape?

Rape doesn't happen in a vacuum and the level of rape, sexual violence and childhood sexual abuse doesn't happen in a vacuum. So I suppose if you know that something is happening, time and time again, hundreds of thousands of times, not just in this country, but across the world, you have to start asking yourself why - why is it that something like this continues. As a feminist, I make sense of rape through the lens of feminism and an understanding of the patriarchy – an understanding that it is a means of maintaining control or ensuring power imbalances. The word for me that is most relevant for me in this is entitlement. So if you are a little boy growing up in this world, then you will know very very early on that there is something a bit different about you. That you have more rights, more status, more authority, more power, more entitlement and more privilege. On the other hand, the little girl you know (because you get messages from all over the place), that your job is to fit in, give way, hold things back, support men, and to manage your own behaviour and other people's. These are quite stark statements really. But when it comes to rape, we've got a whole load of things going on, one of which is male entitlement – If I want something I should have it. Particularly, a power imbalance – I am better than women, therefore if I want to take something I can justify it I can do so internally and externally to myself. I think we also get who creates the narrative around rape, the dominant people in society, which is men, (lots of bloody weird narratives), but the main narrative is: Male sexuality is so big, so immense and so out of control that when a man gets to a certain point sexually, he can't stop himself. So then women have a responsibility to manage not only their own sexuality, but also somebody else's as well. I talk to some women, and they remember being told by their mums "to be careful not to get a man too excited". But because it is so pervasive that rape is about sex, not power, then the thing about men's sexual drive and how a woman might drive a man to the point where he can no longer control his desires by what she wears, talking, flirting, smiling by her presence alone – all of these things are what rape culture pushes back on women. This is what allows rape to become a crime where the victim is the one who becomes the accused. What was *she* wearing, what was *she* doing, why was *she* there, why did *she* smile at him and why did *she* take the drink from him? It stops us from asking "why was he buying her all those drinks that night?" and "why did he offer her a lift home?" We don't tend to ask these questions. She is culpable. Unless of course, in the vast minority of crimes, she happens to fit the ideal victim stereotype –stranger rape, she might be in a great scenario a virgin walking home from Church.

These real rapes make other rapes appear illegitimate in comparison. There was a minister from the Coalition Government who worked within the Ministry of Justice for a while who was responsible for funding our Rape Crisis Centres who said that real rapes are stranger rapes. The way this view gets propagated in direct (media) and indirect ways (socialisation) means that there is a spectrum of male power and privilege to which we are all exposed. This includes something looking as trivial as a marriage proposal, but it's about male power being active, women being passive, women waiting to receive and men being the people who decide when things are going to happen. It's all connected. I mean Nottingham have just redefined street harassment as a hate crime.

What do you think about the classification of street harassment as a hate crime?

I've always been amazed that given what we know about the figures, that the vast majority of victims are women and the vast majority of perpetrators are men – it's a gendered issue and it's a gendered crime. Why isn't it called a hate crime anyway? I'm disappointed that sexual offences aren't called a hate crime. Then it would naturally extend to harassment and stuff on the streets. But why, when all the evidence is there that this is a gendered crime. Even when the victims are men, the perpetrators are still predominately men. Sorry I can't remember what the first question was.

Ah no you've covered it really well! You also touched upon something really interesting, which is a reluctance to see rape as an act violence which sort of ties into my last question. I mean, rape does fall under 'Sexual Offences' and I think there is some sort of assumption within that that there it is some type of sex which obviously has a whole host of implications. How do you conceptualise rape in regards to its legal definition as non-consensual sex?

I do see it as an act of power and control. I don't buy the stuff around it being sexual because I think that it is connected to the idea that men have urges and cannot control themselves. It is crap to say that men have urges that they cannot control. All the newspapers – none of them are blameless in presenting the case all women's characteristics and not his. The fact that conviction and reporting rates are so low is linked to the fact that externally, it's condoned. I think it was best and most horribly summed up a couple of years ago there was a website 'Uni Lads' it was in Plymouth and there was a 'joke' made that said "Only 15% of women report to the police lads, I think that's good odds if you want to go and rape somebody". They took the site down in the end, but that's the kind of thing that was quite an extreme offensive joke, but generally, it reflects ideas about women simply regretting it and 'crying rape'. And most of it isn't reported because women know that the odds are stacked against them in being believed. They don't even make an intellectual or cognitive decision about that. It's instant and internal. The most common question we have here (Devon

Rape Crisis) is “I’m not sure if this was rape or not... I was crying, and I said get off me. But I’m not sure if it was rape or not”. It doesn’t occur to most women to even tell anybody because internally, everything they’ve been fed externally which now exists internally is saying “you must have asked for this in some way”. I mean, why would you?

As a centre, you primarily offer counselling services. Do you also refer victims onto the police?

Absolutely. I’m really happy to refer women on. But it’s not our agenda. And we do support people through it. Women sometimes come to us and want them to go to the forensic exam or court with them and we will. Happy to do anything. But just because I know how much it takes to overcome that internal message, we don’t promote it. Because then there is another thing when they’re already being punished for getting themselves them rape, and then we might punish them for not reporting it. So, we haven’t got an agenda.

Is the other organisation the Sexual Assault Referral Centre (SARC)? What is their role and how do you work alongside them?

We work with SARC really really closely. So SARC deal with 15% of women who report the crime. They are a criminal justice organisation and they collect forensics. Their job is to collect enough evidence to get something through court, and also to keep the witness, the woman herself, supported while she goes through this process. It can take up to two and a half years – from reporting to actually going to court. Of course SARC have a huge case load. So you will get a big flurry of support at the beginning, and then you’ll be left for a long time, and then get a big flurry of support at the end. So in their period of waiting, we often support these women. They have workers who have over 70 cases, so you might only get a phone call once a month. Whereas here, each employee sees 4 people a day because we are doing therapeutic work. SARC also have a counselling service but it’s limited – you can only go to 6 sessions. Whereas ours is unlimited – as long as women take or need. So we might refer onto SARC if someone wants to report, and they might refer to us if someone needs support throughout the process then once someone has been through the criminal justice system, they might also get referred onto us again. So I sit on the SARC board and I meet with the manager Lyndsay every other month and we’re in contact over on the phone every week.

So I know you do have some collaborative power with Devon and Cornwall Police as well, I was wondering if you can talk me through their recent Good Consent Guide Campaign?

We had some indirect involvement with it. I think the Police are still trying to... One of the things that we find difficult is that people (the University, Student Guild and the Police) tend to go away and come up with a campaign, splash it for a couple of weeks and then disappear. And I think the Guild’s NeverOk

campaign is really good. But what happens is that it's a two week wonder. I say the same every year – look to have a consistent message all year around. It's not a thing to win student guild elections on, it's a message of everyday importance for people. I did a lecture for some psychology undergrads last year. It was a group of about 35 women and I showed them the Laura Bates YouTube video on how she set up the everyday sexism project. I asked if anyone in the room had experienced any form of harassment as Laura Bates described, and every single woman in the room put her hand up. Every single person related to that – not once but hundreds of times. Every time they went, to the cash point, to the club, to do some shopping. And none of them had ever reported it. They thought that while it would obviously be nice not to worry about it, they just want to go out and have a good time and if they were to report it, that's all they would ever spend their lives doing. That stuff is not understood by the University. I don't think the depth, complexity and just everyday bombardment of it is understood by the Guild.

In some ways, I understand it for a campaign. I mean, I suppose what they're trying to do is create something very catchy and simplistic point about consent. But to not acknowledge the context in which consent operates does it a huge injustice.

We need a community organisation, academics with expertise in this area and the University with the money and resources to make it happen. On another note, it's sort of like the tea and consent video. And people love it! I suppose they love it because it's quite innocent. It feels a bit divorced from the actual subject. And it makes people think well of course I wouldn't make anyone drink a cup of tea! It allows everyone to go, "yeah yeah yeah, absolutely, not me though". Cases we have here demonstrate that a lot of the time it is not that consent isn't sought, it's that it's irrelevant. It's not an issue. It's not "I wonder if she'd like a cup of tea or not" it's "I want a cup of tea and I'm going to have one" and the other person is invisible in that. We have a lot of situations where women say things like "I was crying", "I said no", "I wasn't there" or "I was frozen". In these cases, it's not like someone has misunderstood the cues, they have not been looking for them or interested in the cues. Explicit consent for every part of the sexual contact is a bit ridiculous, but also ridiculous at the other end is the idea that once consent is given, everything is fair game. I think the phrase I like is 'active and enthusiastic participation' that's really easy to spot. If someone is saying "please please make me a cup of tea now!" – It's hard to misjudge that. I think 'consent' makes it sound a little bit clinical and contractual. Enthusiastic participation would be a radical campaign for the University. I can't see why men and women wouldn't get behind that. One of the problems is that the University as an institution, all Universities, but particularly this one with such a high reputation, does not want to be seen as a place where women are at risk of assault or sexual violence. I was involved in a task force during the summer term drawing up some new protocols around the reporting of sexual violence, but they don't really want to collect the figures because we know that if you start collecting figures they shoot through the roof. In the short term, you have to hold your nerve with that and know that it's a good thing. Well

actually, one of the top 100 in the world don't want their figures to go through the roof because if Oxford aren't keeping the figures, it looks like this is a 'rapey city'.

I mean, it could have the completely opposite effect. Prospective students might think wow I really want to come to this University, look at how they're leading the way in their attempts to tackle sexual violence on campus. That's the sort of place I want to be – the sort of place that stands up to that.

Definitely! One of the things I did talk about with Alec (Student Guild Welfare Sabb) was that they're going to be doing some training of door staff. My fear is that the training of door staff is going to be focused on women: how are we going to police her and keep her safe? I'm fed up with that discourse. So there's some potential there. We need to remind them of the dangers of colluding out of lack of awareness.

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